

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**17 JANUARY 2018**  
**ALL WARDS**

**HOUSE OF LORDS SELECT COMMITTEE ON THE LICENSING ACT 2003**  
**GOVERNMENT RESPONSE**

1. Summary
  - 1.1 This report summarises the Government Response to the Report of The House of Lords Select Committee on the Licensing Act 2003.
2. Recommendation
  - 2.1 That the report be noted.

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### 3. Background

- 3.1 The House of Lords appointed a Select Committee on the Licensing Act 2003 on 25 May 2016. The purpose of the Select Committee was to carry out a review of how the Licensing Act 2003 had been implemented, with a view to understanding any lessons learned and to consider any proposals to amend the Act. The findings of the Select Committee were reported to your Committee in July 2017 along with some officer commentary.
- 3.2 In November 2017 the Government published its own response to the Select Committee report. These responses have been incorporated into the document presented to your Committee in July 2017 – for ease of reference and to provide context. This document is attached as an Appendix to this report.
- 3.3 A copy of the full response document can be located here:  
<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. Summary of Government Response.

- 4.1 The Government seeks to address many of the recommendations of the Select Committee through amendments to the Statutory Guidance (s182 Guidance).
- 4.2 There seems to be general agreement from the Government that many of the points raised by the Select Committee are valid, although the approach to remedying the issue varies significantly.
- 4.3 Significantly for your Committee, there are no plans to introduce locally set fees, nor to vary the existing fee structure. This is disappointing as the current fee structure causes an unsustainable pressure on the Licensing Service.
- 4.4 On the subject of planning and licensing, the Government does not agree with the effective ‘merging’ of the two areas, either administratively or legally, although they do echo the concerns regarding the way in which the two regimes conflict, and recommend an improved communication between the two systems.
- 4.5 Officers have met with colleagues from planning to try and find ways in which we can improve the interaction between the two service areas, and will continue working on this improvement going forward.
- 4.6 With regard to Cumulative Impact Policies; the Government will be progressing with the enacting of the Statutory provisions for Cumulative Impact. The legislation proposes a process not fundamentally different to the existing system used by your Committee. There will be a requirement to review the CIP areas more regularly than the Statement of Licensing Policy, which will be the only major difference.

- 4.7 Recommendations 11 and 12 referred to minimum standards for Member training. The current Code of Conduct for Licensing and Public Protection Committee Members states as follows:

*Members dealing with Licensing issues will be required to attend a training session each year to receive guidance in relation to Licensing regulations and procedures and on declaration of personal or prejudicial interests. Training will be conducted in accordance with the Training for Councillors standard. Members who fail to attend such training will be excluded from meetings of Licensing Committee. This training should include a balance of the following:*

- *Short (half day) sessions on special topics of interest or where appeals have indicated problems with Licensing policy.*
- *Special topic groups to consider thorny issues in depth.*
- *Formal training by internal and external speakers.*
- *Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session.*

- 4.8 Officers are currently working on a separate report, to be brought to your Committee in the near future detailing more specific training requirements, and proposing a training plan.

## 5. Implications for Resources

- 5.1 At this early stage there are no implications for resources, although, the continuing inability to be able to set fees on a local basis only exacerbates the current financial pressures caused by the existing fee structure.

## 6. Implications for Policy Priorities

- 6.1 This work supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

## 7. Public Sector Equality Duty

- 7.1 This report is for information only. An Equalities Impact Assessment is not required.

## 8. Consultation

- 8.1 The content of this report is for information only and required no consultation to be carried out.

Head of Environmental Health

On Behalf of:

**DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: nil

## APPENDIX 1

<b>Summary Of Conclusions And Recommendations Of The House Of Lords Select Committee.</b> <b>(With Officer Comments In Grey)</b>	<b>Summary of Government Response</b>
<b>The Background to the Act</b>	
<p>1. 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)</p>	<p>No action</p>
<p>2. 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)</p>	<p>No action</p>
<p>3. 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)</p>	<p>Remains under review</p>
<p>4. 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)</p>	<p>Remains under consideration</p>
<b>The Licensing Process</b>	
<p>5. 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)</p>	<p>No action</p>
<p>6. 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)</p>	<p>No action</p>
<p>7. 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)</p>	<p>No action</p>

<p><i>This was not included in the call for evidence, but a suggestion which resulted from some of the evidence presented to the Select Committee. Had this been included in the call for evidence, we would have had an opportunity to comment. Both planning and licensing committees are carried on in accordance with their own, different, legislative controls, with many of the same Members. We would seek to ensure that both the Licensing and Public Protection Committee and the Planning Committee take an active part in any "debate and consultation". We would strongly refute any implied criticism of the Committee.</i></p>	
<p><b>Appeals</b></p>	
<p>8. 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)</p>	<p>To amend s182 Guidance: We do not consider it necessary to legislate to this effect. The section 182 guidance states that <i>"It is important that a licensing authority should give comprehensive reasons for its decision in anticipation of any appeals. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act."</i> We will amend the guidance to extend this principle to decisions made after a hearing.</p>
<p><i>In circumstances where a Consent Order is agreed to, this will be included in the monthly report to LPPC on the outcome of appeals.</i></p>	
<p>9. 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)</p>	<p>No specific action other than: We will explore with partners whether there is good practice within the existing regime and from similar regimes that may offer some ideas for consideration.</p>
<p><i>This was not included in the call for evidence, but a suggestion which resulted from some of the evidence presented to the Select Committee. There are marked differences between the two systems, most fundamentally involving the parties who are able to appeal against planning decisions. It is unclear how this would improve the situation for any party and it</i></p>	

<i>would appear the issues may be more appropriately addressed by more training for the Magistrates.</i>	
<b>Immediate Changes</b>	
10. 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)	To work with the LGA on addressing these points through their Councillor Handbook.
<i>Agreed</i>	
11. 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)	No specific action. To 'consider with partners'
<i>Agreed</i>	
12. 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)	No specific action. To 'consider with partners'
<i>Agreed. There are already training requirements in place within Birmingham, but a National approach is to be welcomed.</i>	
13. 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)	To amend s.182 Guidance and LGA handbook.
<i>Agreed</i>	
14. The Hearings Regulations must be amended to state that the quorum of a sub-committee is three. (Paragraph 229)	Not required. Already the case.
<i>Agreed, this clarification of the Regulations is welcomed. (Albeit, in Birmingham we already work on this understanding)</i>	
15. 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)	No action.
<i>Agreed.</i>	
16. 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)	To consult with partners before, potentially amending s182 guidance.

<i>Agreed. This would effect a single approach across all Local Authorities and reduce the likelihood of challenge to procedures.</i>	
17. 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)	Judicial responsibility, not Government. Referred to Judiciary.
<i>Agreed.</i>	
18. 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)	No plans to remove this requirement
<i>Agreed.</i>	
19. 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)	To strengthen s182 Guidance
<i>Agreed. This is no change to the current position.</i>	
20. 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)	To be considered as part of review of s.182 Guidance.
<i>Agreed. The Guidance should be amended to clarify the position and negate previous mixed messages which were given.</i>	
<b>The Licensing Objectives</b>	
21. 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)	No action No intention to add more objectives.
22. 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)	PH Are already a Responsible Authority within the existing regime. Seek to utilise existing framework, without adding new Licensing Objectives.
23. We do not recommend that "enjoyment of licensable activities", "the provision of social or cultural activities", or anything similar, should be	No action: No intention to add more objectives.

added as a licensing objective. (Paragraph 265)	
24. We do not recommend adding as a licensing objective “compliance with the Equality Act 2010” or “securing accessibility for disabled persons”. (Paragraph 272)	Government agree that additional objective would not be the solution to the problems experienced.
25. 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)	To consult on this subject further with the trade and NALEO.
<i>Agreed.</i>	
<b>The Off-Trade</b>	
26. We do not recommend that powers to ban super-strength alcohol across many premises simultaneously be granted to local authorities. (Paragraph 309)	No intention to grant these powers
27. 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)	No specific action. To ‘consider’.
<i>Agreed.</i>	
28. 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)	Further work to be done before continuing with the introduction of GRIPs.
29. 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)	The Government does not intend to introduce legislation based on part 1 of the Alcohol etc (Scotland) Act 2010.



<p>30. 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)</p>	<p>The section 182 guidance is not an appropriate means to encourage the industry to adopt these measures on a voluntary basis, as the guidance is provided for licensing authorities in relation to the carrying out of their functions under the Act.</p>