BIRMINGHAM CITY COUNCIL

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

12 JULY 2017
ALL WARDS

HOUSE OF LORDS SELECT COMMITTEE ON THE LICENSING ACT 2003

1. Summary

1.1 This report summarises the findings of the House of Lords Select Committee on the Licensing Act 2003.

2. Recommendations

2.1 That the report be noted.

2.2 That a letter be sent to the appropriate Government Minister(s) on behalf of the Committee, asking that the Government allows Licensing Authorities to be permitted to set local fees under the Licensing Act 2003 at the earliest opportunity.

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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.

3.2 Evidence was presented to the Select Committee either by way of oral evidence or written evidence.

3.3 Birmingham City Council responded to the call for evidence in writing. A copy of our response is attached at Appendix 2. Additional information on the Select Committee along with further detail of all the evidence presented to it is available at: parliament.uk/licensing-act-committee. The written evidence extends to 1039 pages.

3.4 The report of the Select Committee itself is almost 200 pages long. It is available to view online at: www.publications.parliament.uk/pa/ld201617/ldselect/ldlicact/146/14602.htm

3.5 The Summary of Conclusions and Recommendations made by the House of Lords Select Committee is attached at Appendix 1 to this report. This document also includes officer comments on some of the more contentious recommendations, although many suggestions are simply noted.

3.6 Following the publication of the report, the Institute of Licensing (IoL) released an online survey seeking comments on these recommendations from their members. The deadline for such responses was 9th June 2017. Officers of the Licensing Management Team provided a response, which is attached at Appendix 3 to this report.

3.7 It should be noted that the IoL survey was informal and did not form a part of the Select Committee Review. It was a means of the Institute establishing the extent to which their members agree or disagree with the recommendations.

3.8 Some of the proposals of the select Committee will be implemented more swiftly than others. The majority of proposals put forward would require more detailed examination and changes to legislation, which will take time to effect.

4. Summary of Select Committee Findings

4.1 The summary of Select Committee Conclusions and Recommendations is attached at Appendix 1 to this report.

5. Implications for Resources

5.1 At this early stage there are no implications for resources, although, if the proposal to be able to set fees on a local basis were to be implemented, this

would hopefully reduce the current financial pressures caused by the existing fee structure. The Budget Monitoring report for month 2 that forms part of today's Licensing and Public Protection meeting agenda predicts a year-end overspend of £83,000 that is attributable to our inability to set local fees under the Licensing Act 2003.

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 House of Lords Select Committee consulted widely in calling for evidence. Birmingham City Council Licensing Authority responded to the call for evidence in writing and our response is attached at Appendix 2. The timetable for the call for evidence in 2016 was such that it was not possible to consult with the Licensing and Public Protection Committee before sending our response, however, it was completed under Chair and Chief Officer's authority and was based on our experience of administering the Act as officers and elected members.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil

APPENDIX 1

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS OF THE HOUSE OF LORDS SELECT COMMITTEE. (With Officer Comments in grey)
The Background to the Act
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)
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)
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)
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)
The Licensing Process
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)
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)
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)
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.
Appeals
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)

In circumstances where a Consent Order is agreed to, this will be included in the monthly report to LPPC on the outcome of appeals.
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)
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 would appear the issues may be more appropriately addressed by more training for the Magistrates.
Immediate Changes
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)
Agreed
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)
Agreed
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)
Agreed. There are already training requirements in place within Birmingham, but a National approach is to be welcomed.
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)
Agreed
14. The Hearings Regulations must be amended to state that the quorum of a sub-committee is three. (Paragraph 229)
Agreed, this clarification of the Regulations is welcomed. (Albeit, in Birmingham we already work on this understanding)
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)
Agreed.

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)

Agreed. This would effect a single approach across all Local Authorities and reduce the likelihood of challenge to procedures.

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)

Agreed.

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)

Agreed.

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)

Agreed. This is no change to the current position.

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)

Agreed. The Guidance should be amended to clarify the position and negate previous mixed messages which were given.

The Licensing Objectives

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)

23. 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)

24. We do not recommend adding as a licensing objective "compliance with the Equality Act 2010" or "securing accessibility for disabled persons". (Paragraph 272)

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)

Agreed.

The Off-Trade

26. We do not recommend that powers to ban super-strength alcohol across many premises simultaneously be granted to local authorities. (Paragraph 309)

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)

Agreed.

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)

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)

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)

Temporary Event Notices

31.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)

32. 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)

When implementing any notification system for residents /local councillors care should be taken not to raise expectations if they are not able to object to the TENs.

33. 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)

Agreed

34. 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)

Agreed

35. 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)

Agreed

36. 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)

Agreed - TENs are already searchable on our Public Register.

37. 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)

Agreed

Crime, Disorder and Public Safety

38. 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)

Agreed (although there are benefits to having sworn police officers carrying out the Licensing functions.)

39. 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)

Agreed - although there should also be training for the other Responsible Authorities so they are aware of their powers and opportunities available to them.

40. 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)

Agreed
41. 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)
42. 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)
43. 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)
Agreed
44. 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)
Noted
45.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)
Noted
46. 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)
Agreed
47. 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)
Agreed

The Night-Time Economy
48. 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)
This would be a positive role to introduce to the City - although it remains to be seen who would pay for this role.
49. 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)
Agreed
50. 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)
Only relates to LONDON
51. 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)
agreed
52. 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)
Noted
53. 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)
noted

54. 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)
55. 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)
noted
56. 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)
Noted. Although these initiatives carry significant cost implications which cannot be met through the Licensing Service ring-fenced budgets.
57. 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)
Noted. There are already 11 BIDs in the Birmingham City Council area.
Live Music
58. 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)
Agreed
59. 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)
Agreed. There is some confusion around the many and varied exemptions which would benefit from clarification.
60. 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)
Noted
Fees and Fee Multipliers
61. 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)
Agreed. This is an area of significant concern for the Licensing and Public Protection Committee.

62. 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)
Agreed. Any proposal to set fees locally would be entirely on a cost-recovery basis.
63. 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)
Noted
64. 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)
Noted
Other Matters of Importance
65. 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)
noted
66. 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)
Agreed. The purpose of having a personal licence is undermined by the lack of any cross border information sharing. A national database would help to resolve this.
67. 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)
Noted.
68. The evidence we received on the application of the Act specifically to clubs suggests that they have adapted to it well. (Paragraph 609)
noted
69. 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)
noted
70. 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)
Noted

71. 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)
Noted
72. 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)
Noted
73. We are concerned that section 141 of the Licensing Act 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)
Noted. Officers will offer support to West Midlands Police with regard to this matter - although, again, it is an area where better training would help to improve the situation.

APPENDIX 2

Select Committee on the Licensing Act 2003
Response to the Call for Evidence from Birmingham City Council
Licensing and Environmental Health

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

A. We agree that the four licensing objectives are the right ones to promote, but we would like to see the protection of health and wellbeing as a fifth objective.

Health and wellbeing is already a licensing objective in Scotland. If it were a licensing objective in England it would enable us to take account of the impact that the sale of alcohol has on the NHS accident and emergency services where hospital admissions can be related to particular premises or even groups of premises. There are practical difficulties with trying to relate hospital admissions to particular premises because being able to link an admission to a specific premise depends on very accurate data being kept by hospitals. The priority for accident and emergency departments is to deal with patients, not keep statistical information. It is also recognised that the fact that a patient may have been taken to hospital from or near a particular premises does not mean that those premises were responsible for selling the bulk of the alcohol that led the person to require help, whether through illness or because of fights that occur as a result of drunkenness.

Nevertheless, we think that licensing authorities should be able to take account of accident and emergency data and indeed general statistical data about the prevalence of drinking in an area and general alcohol related admissions caused by illnesses such as liver disease or heart disease. This data should be able to be used when we formulate our Statement of Licensing Policy in ways that are similar to those now permitted under the Gambling Act to map areas of gambling related harm. It would be particularly beneficial in terms of evidence to support special policy areas (or Cumulative Impact Areas). This might be relevant to Night Time Economy areas or areas where there is a proliferation of off-licences where street drinking is a problem, for instance.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

A. As a licensing authority we would not wish to create artificial barriers to the public's enjoyment of licensed events, particularly small scale community events. Guidance to local authorities in respect of community events has already been relaxed. If the enjoyment of licensable activities became a licensing objective it would potentially come into conflict with the four existing objectives which would inevitably have to take precedence. We could not risk

such an objective undermining the existing objectives. It is difficult to imagine how a licensing authority could promote the proposed objective in the light of our overriding responsibility under the Licensing Act which is to protect the safety of the public.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? 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?

A. There are serious concerns that the LMA12 has gone beyond what was intended and tipped the balance more to those who wish to sell alcohol, e.g.:

   a. A premises which sells alcohol can still have live and recorded music, but due to the relaxations need not flag this upon the application, and therefore will operate without any controls.

   b. Conditions which are relevant to safeguarding public nuisance e.g. keeping windows and doors closed, installation of limiters, etc., can, up to 23.00 hrs, be ignored, because the provision of live and recorded music before 23:00hrs is deregulated.

   c. The above two points are examples which causes more effort for the Responsible Authority, this effort being reactive where complaints are received and hence more involved than proactive action to avoid these problems. This can also create unnecessary disruption for local residents.

   We would not support further relaxation of the Licensing act to accommodate live music.

   In Birmingham we have not made use of the Late Night Levy after taking the following into account:

   The responsibility for collecting the Levy would be the local authority's. After deducting the cost of collection we must give 70% to the police and we retain 30%.

   The intention of the levy is to pay for additional policing of the night time economy, however there is no obligation upon police forces to spend the levy on the night time economy or within the area for which it was collected. Levy collected in Birmingham could, for instance, be spent anywhere in the West Midlands. The police could in fact spend it on anything of their choosing. The 30% allocated to the local authority would have to be spent on tackling alcohol related crime and disorder and services connected to the management of the night time economy (e.g. taxi marshal schemes).

The power to introduce a Levy rests with the Licensing Committee.

Reasons why we have not considered implementing the Levy

Birmingham's Licensing and Public Protection Committee considered the Levy in a report in September 2012 immediately prior to the legislation being enacted. The Committee did not express an appetite for introducing the Levy. Some of the reasons against a Levy in Birmingham are:

- The economic impact that an additional levy would have on businesses that are trading in already difficult circumstances.
- The likelihood that businesses would reduce their trading hours to avoid the levy, resulting in a city centre that would 'shut' after midnight. To avoid the levy they would have to vary their licences. The legislation permits them to make a free variation. The variations would have to be made by the Licensing service without any income for the work.
- The economic impact on businesses that support the night time economy e.g. drinks suppliers, taxi and private hire firms, late night food businesses.
- The possibility that licensed premises would move from Birmingham into neighbouring authorities where the levy might not be applied.
- Premises in Business Improvement Districts (BIDs) would be eligible for an exemption from the levy (at the discretion of the local authority). Licensed premises within BIDs already have to pay a BID levy and would be against having to pay another levy on top.
- Given that BIDs would probably be exempted and all the main night time economy areas in Birmingham are part of a BID, the vast majority of premises that actually create the need for policing at night would not be paying the levy.
- The local authority has to designate the entire city as a Levy area. It can not choose particular areas within its boundary. Therefore the premises that would be affected by the Levy would in the main be suburban pubs that don't make a call on police resources. They would be paying to police the city centre whose premises would be exempt.
- It is possible that the cost of collecting the Levy would be greater than the revenue it would deliver given the number of exempt premises under the legislation.
- Licensing, the Police and other Responsible Authorities (Environmental Health, Trading Standards, Planning, Fire Service etc.) work well together to address premises that cause trouble. There are already sufficient tools at our disposal to deal with any issues that arise using existing powers.
- There is a reputational aspect to this. Given that few have so far gone ahead with the Levy, if we were to apply it here we would be saying that the night time economy in Birmingham was out of control, which is not the case.
- Officers from Licensing consulted with Police Licensing Officers and the Force Solicitor prior to the implementation of the legislation in 2011. West Midlands Police was not seeking the introduction of the Levy and that remains their position.

We believe that EMROs are a draconian measure and would blight a locality, identifying it as a place where crime and disorder were out of control. There

are sufficient tools in the Licensing Act to deal with problem premises without resorting to having to apply early closing times to a group of premises.

In terms of the balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object, the balance still seems to be in favour of those wishing to sell alcohol. The Licensing Act still works on a presumption that a licence will be granted and it is for the objector to demonstrate reasons why the licence should not be granted. Frequently objectors' grounds for objection do not fall under one of the 4 licensing objectives, and yet are not unreasonable. This often arises where city centre living comes up against the night time economy.

Local authorities are encouraged to use space in city centres for residential accommodation, especially apartments. Residents may object to the granting of new licences for bars, clubs and restaurants nearby, because of the impact the premises will have on their quality of life, or the impact that large numbers of customers will have on local parking and the consequential increase in numbers of taxis that will be attracted to the area. They face the difficult task of trying to prove what might happen in the future without being able to provide factual evidence to support their objection. It is often impossible to provide factual evidence because licensed premises have not been in existence up to that point.

Licensing committees should have the ability to consider a broader range of factors than purely those related to the licensing objectives and they should be allowed to give greater credence to residents' and objectors' concerns about what will happen in the future. Currently such concerns might be dealt with through conditions being attached to a licence, whereas what objectors really want is for the licence not to be granted.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

A. We are not convinced that all responsible authorities necessarily maximise their role within the licensing regime. Inevitably this will vary between different local authorities, but it can be due to competing priorities and how responsible authorities perceive their principal duties. Licensing services can improve integration between responsible authorities through offering training to ensure that they understand how the legislation works and what powers are available to them.

We find that local communities do not engage with the licensing regime unless and until there is a specific issue concerning a premises in their area that directly affects them. We have experienced very low response rates when consulting with the public on matters such as special policy areas which do not relate to particular premises.

Part of the problem is connected to the way that premises are required to advertise applications for the grant or variation of a licence through the blue notice and newspaper advertisement scheme. Notices are often overlooked by the general public and Licensing is expected to maintain neutrality by not encouraging objections. In planning legislation people living close to a site where planning permission has been requested are written to and told of the application and their right to object. This is not reflected in licensing legislation. One possibility would be to replicate something similar whereby either the licensing authority wrote to people in the vicinity to advise them of the application or if there was a requirement on the applicant to notify people living nearby. There would be issues to resolve around identifying the physical distance within which people should be notified, but presumably these are matters that have already been addressed in planning law.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

A. It is our view that licensing and planning policy should be properly harmonised to avoid discrepancies between planning consents and premises licences. It would be advantageous if it were a requirement of the licensing process to demonstrate that planning consent is in place for the activity and times being applied for. But over and above this there is scope for closer integration of the licensing and the planning regimes. The two are entirely separate and there is no overarching framework that integrates the authority's licensing and planning policies. The 'coherent national and local strategy' does not exist.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

A. Local areas could be shaped more effectively if local authorities were empowered to set limits on the number of licensed premises in a given geographical area. This is not currently permitted apart from Special Policy areas, but even these cannot set a limit on new premises. They merely have the effect of requiring the applicant to demonstrate that the premises will not have an adverse impact on the licensing objectives. Unless the local authority can specifically place a limit on number of premises it will never be able to shape localities. An example might be the proliferation of off-licences or fast food takeaways (with late night refreshment licences) in suburban high streets. The local authority has very limited ability to shape the look and feel of the high street, but a cap on numbers of licensed premises would help to give the local authority that ability.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

A. The police powers appear to be adequate to close premises when necessary and we have held hearings where these powers have been used effectively. Generally speaking the police have sufficient powers to promote the licensing objectives, but our experience is that the knowledge of how to use these powers is focussed in the hands of a very small number of specialist police licensing officers. It would be preferable if there was a greater awareness amongst the general neighbourhood police teams of their powers.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

A. We do not have an airport or port within our local authority's geographical boundary and cannot comment on this question.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

A. It would be advantageous if all applications for premises licences and TENs were served on the Licensing Authority and not to the individual Responsible Authorities, in a manner similar to the Planning Portal. The Licensing Authority would then distribute the applications to relevant RA's, thereby ensuring all documents are correctly served and saving some effort for the applicant, although the additional cost should be borne by the applicant. This cost may be reduced if all applications had to be served electronically, including TENs.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

A. At a practical level, we find that applicants whose applications are refused or who object to conditions that have been applied to their licence will attempt to negotiate with licensing officers to try to arrive at a different decision after a licensing committee or sub committee has heard a case. An officer cannot enter into such negotiations unless he or she has been delegated with the authority to make an alternative arrangement. It is very unlikely that an officer would be given such delegated authority because it would completely undermine the authority of the sub committee.

In practice, we have had occasions when, following legal advice, we have been advised that a prospective appeal would be successful and have agreed to a consent order to resolve a case before it reaches court. Therefore there is a method by which cases can be mediated, but it is not prescribed or documented anywhere.

Issues arise where the Licensing Authority becomes the respondent to an appeal as a result of a decision to refuse a licence application (for instance) based on the evidence of a particular responsible authority (e.g. the police), but it is the Licensing Authority that bears the risk of the appeal once at court, including costs. There should be a way by which the costs can be shared between the Licensing Authority and the responsible authority where a decision has been made based on the responsible authority's evidence.

We do not consider that an appeal route to the Crown Court is necessary.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

A. The off-trade is where the growth appears to be in terms of new licences, but generally we find that supermarkets and larger retailers are well managed and cause least problems. Most problems associated to off-sales are connected to small corner shop type outlets, whether through sales of alcohol and cigarettes to minors or through the sale of alcohol to street drinkers. Super strength alcohol sales are problematic. We would welcome a simpler process by which we can prevent the sale of super strength alcohol, particularly individual cans or bottles, without having to go through a full review process, which is currently the case.

We do not find there to be a problem with delivery services.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

A. This question is largely one relating to aspects of public health and a separate response is being submitted to the consultation by Birmingham's Public Health service that will address this question. It is already illegal to sell alcohol below the permitted price, but it is not apparent that this has had any effect on sales of alcohol or alcohol related harm.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

A. We are very firmly of the view that licence fees should be determined locally.
The Licensing Act 2003 sets a fee structure for local authorities, which specifies the circumstances in which a fee may be charged. The Licensing Act 2003 (Fees) Regulations 2005 prescribe the amount that an authority may charge. The fees have never reflected the true cost of administering licences. The Government has not allowed any fee increase since 2005; therefore income has not kept pace with the rising cost of administering licences, contributing to financial pressures. In 2011 the Police Reform and Social Responsibility Act gave the Home Secretary a power to allow local authorities to set local licensing fees. In 2014 the Home Office consulted on proposals to allow local fee setting. No changes were made as a result of this consultation and the fees remain at the 2005 level.
A worked example of the estimated actual cost of the Licensing Act 2003 Fees is shown below. Whilst it must be remembered that these figures do not include any proposal regarding annual fees, which would potentially mitigate against some of these fees, the figures provided show the stark contrast between the Statutory Fees and the cost to the service. For example – a Temporary Event Notice is currently £21. When the amount of officer time and other factors are considered, the true cost is estimated at £400. This is almost 20 times more than the statutory fee.
The consequence of not being able to charge the true cost of the licence fee is that Birmingham City Council is asked to subsidise the cost of the licensing service, which should be self-financing and paid for by licence holders.

LICENSING ACT 2003 - PRESCRIBED FEES & Suggested Costs			**Birmingham City Council**
Application Fee			
Rateable Value	**Premises Value**	**Current**	**Suggested cost**
A	No rateable value up to £4,300	**£100**	**£1687**
B	£4,301 to £33,000	**£190**	
C	£33,001 to £87,000	**£315**	
D	£87,001 to £125,000	**£450**	
E	£125,001 and above	**£635**	
D primarily alcohol	2 x multiplier	**£900**	
E primarily alcohol	3 x multiplier	**£1,905**	
Annual Charge			
Rateable Value	**Premises Value**	**Current**	**Suggested cost**
A	No rateable value up to £4,300	**£70**	**Not available**
B	£4,301 to £33,000	**£180**	
C	£33,001 to £87,000	**£295**	
D	£87,001 to £125,000	**£320**	
E	£125,001 and above	**£350**	
D primarily alcohol	2 x multiplier	**£640**	
E primarily alcohol	3 x multiplier	**£1,050**	
Other Fees			**Suggested cost**
Personal Licence (grant)		**£37**	**£332**
Temporary Event Notice (TEN)		**£21**	**£400**
Theft/loss of premises licence/club certificate, summary, personal licence or TEN		**£10.50**	**£68**
Provisional Statement		**£315**	**Not available**
Change of name, address, club rules		**£10.50**	**£68**
Personal Licence Change of details.		**£10.50**	**£68**
Variation of DPS		**£23**	**£448**
Transfer of premises licence		**£23**	**£396**
Interim Authority Notice		**£23**	**Not available**
Right of Freeholder notification		**£21**	**£72**
Minor Variation		**£89**	**£213**
Variation to include alternative condition (no DPS)		**£23**	**£448**

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

A. We are unable to comment on this question.