

# Local Government Association Briefing

## Debate on the Report from the Select Committee on the Licensing Act 2003

### House of Lords

Wednesday 20 December 2017



#### Key messages

- The LGA welcomed the appointment of a House of Lords Select Committee to investigate the effectiveness of the Licensing Act 2003 and the insight that the Committee's work has provided in a number of areas.
- However, we do not support the Committee's main conclusion and recommendation, that the Licensing Act 2003 is fundamentally flawed and needs a radical overhaul, including the abolition of local authority licensing committees.
- The Licensing Act 2003 provides a sound framework that allows for local decision-making to protect the public, support local businesses and enables councils to take action against mismanaged premises. Although there is a need for some reform to allow councils to effectively resource, scrutinise, and monitor the licensing system, those most involved in working with the Act do not want to see further major upheaval of the system
- We are pleased that the Government's response to the Committee's report did not accept the recommendation to merge the licensing and planning systems but instead focuses on how coordination between licensing and planning committees can be improved.
- The Licensing Act 2003 Committee's report noted LGA research showing that the Act is underfunded as a result of fees being fixed nationally in 2005, when the Act was first introduced. This means local government subsidises this work by £10.3 million each year. The Committee accepted the argument for localisation of fees, and we are calling on the Government to localise licensing fees in line with its earlier commitments to do so. However, as an interim measure the Government must uprate the existing nationally set fees from their 2005 level.
- Following the publication of both the report from the Licensing Act 2003 Committee and the Government's response to the report, the LGA is disappointed that the Government have not made a commitment to introduce a health objective or localise licensing fees in the immediate future.
- The Act should be amended to include a public health objective. The need for this objective is reinforced by an LGA survey which showed 89 per cent of Directors of Public Health support its inclusion<sup>1</sup>. We were pleased to note the House of Commons Health Committee supported the inclusion of a public health objective in planning and licensing law. However, we are disappointed that the Licensing Act 2003 Committee and the Government have not taken up this recommendation.
- The LGA does not support the Committee's recommendation that the Late Night Levy should be scrapped. We have previously called for councils to have the ability to define specific parts of their areas that the Late Night Levy should apply to, and supported this change being introduced by the Policing and Crime Act 2017. This change should be given time to take effect, although we recognise that some areas will prefer to use alternative approaches to the levy.

# Briefing

## **Background**

### **House of Lords Select Committee Review of the Licensing Act**

On 25 May 2016 the House of Lords appointed a Select Committee on the Licensing Act 2003 in order to investigate the effectiveness of the Act. The Committee concluded that the Licensing Act 2003 is fundamentally flawed and needs a radical overhaul, including the abolition of local authority licensing committees.

The full report can be accessed [here](#).

### **The role of councils and their planning and licensing committees**

Councils have a number of functions under the Licensing Act 2003. The most important of these is to act as licensing authorities, who oversee the issue, enforcement, review and revocation of licences.

Specific council services such as environmental health, trading standards and public health teams are also responsible authorities under the Act. These services will be located in the same council in unitary councils, but in two-tier areas trading standards and public health will be located in the top-tier county council.

We reject the Committee's proposal to scrap licensing committees and merge licensing and planning. Licensing and planning are fundamentally different functions which should remain separate. There is however scope for these frameworks to link together more closely. For example many councils are now beginning to explore the opportunity for greater interaction between their licensing and planning policies to help shape local areas. This appears to be emerging as an early strand of work for the London Night Time Commission.

There are also practical amendments that would make the distinction between the two services simpler for businesses and the general public. For instance, it should be a requirement to have planning consent, where necessary, before applying for a licence.

Licensing committees are also prohibited in legislation from having consideration of planning decisions relating to operating hours of any businesses applying for a licence when they consider awarding these licences, unless a formal representation is made. This can sometimes lead to a different set of operating hours which causes confusion for applicants and residents. While licensing and planning do consider different criteria for a licence's opening hours, and it is right they should do so, an outright ban on taking the other committee's decision into account is too stringent and should be relaxed so that businesses can be provided with one set of operating hours.

### **Localisation of licence fees**

Licence fees should be set at a local level, as is the case with the Gambling Act 2005, Scrap Metal Act 2013, Taxi and Private Hire Vehicle legislation and many other regulatory systems. Our recent survey<sup>ii</sup> of councils showed that there is a deficit of around £10.3 million each year in administering the Licensing Act. This is an underestimation of the true costs as it does not include the costs to responsible authorities of delivering their responsibilities under the Act.

We were disappointed that the Government has made no commitment to localising licensing fees in the near future. The LGA is calling for a flat-rate increase of fees in the short-term to allow councils to recover some of the costs of carrying out licensing. In the long-term though it is vital that licensing fees are localised to ensure that licensing can

be sustainably funded in the future.

### **Introducing a public health objective**

Under the current iteration of the Licensing Act there are four existing objectives. These are: prevention of crime and disorder, promotion of public safety, prevention of public nuisance and protection of children from harm for local authorities to consider when considering a license application. The objectives are the right ones for local authorities to promote and local government would not want to see these changed. We would also like some of them to be replicated in the Gambling Act 2005.

However the LGA also supports the introduction of a health objective to the Licensing Act and we were disappointed that no commitment has been made to do this. Public health was made a local authority responsibility in 2011, but in 2016 an LGA survey of Directors of Public Health revealed that many were finding practical barriers to effectively contributing a health perspective to licensing decisions. In response to the survey 89 per cent of Directors of Public Health said a health objective would be helpful to them<sup>iii</sup>.

We have worked with Public Health England, the Home Office, and a number of licensing authorities to identify and test the evidence that could be used in a health representation if there was a health objective under the Act; this evidence will differ from the limited evidence that can be used under the existing objectives.

### **The Late Night Levy**

In our response to the Committee's inquiry we made the case that the Late Night Levy has proven effective, as it in part addresses the shortfall in income that otherwise prevents councils from taking forward innovative ideas. However, the requirement to apply it to the whole of a local authority area has limited it to smaller urban areas. When the original legislation passed through Parliament, the LGA argued that councils should be able to define specific areas for the levy to apply to. We also suggested there should be greater obligations on the Police and Crime Commissioner to spend their portion of the money in the area from which it was raised, and on the late night economy making the contribution.

The LGA therefore does not support the Committee's recommendation that the Late Night Levy should be scrapped. Having previously called for councils to have the ability to define specific parts of their areas that the levy should apply to, we supported this change being introduced by the Policing and Crime Act 2017. This change should be given time to take effect, although we recognise that some areas will still prefer to use alternative approaches to the levy.

## LGA publications

[Rewiring public services – rewiring licensing 2014](#)

[LGA Written evidence submission to Licensing Act 2003 Committee inquiry](#)

[LGA Supplementary written evidence to Licensing Act 2003 Committee inquiry](#)

### **LGA press release responding to the Select Committee report (4 April 2017)**

*LGA response to call for council licensing committees to be scrapped*

Responding to a recommendation by the House of Lords Select Committee for council licensing committees to be scrapped, and their work done by planning committees instead, Cllr Chris Pillai, Licensing spokesperson for Local Government Association, said:

“The recommendation to scrap council licensing committees is unnecessary and ill-advised and does not take into account the fact that those most involved in working with the Act do not want to see further major upheaval of the system.

“Figures from 2016 show that of the more than 21,000 licence applications made to council licensing committees, less than 1 per cent were challenged. This reflects the fairness and sound basis licensing committees are using to make their decisions.

“It will always be possible in any system to pull out examples where things haven't worked as well as they should have, and we agree that there is scope for the planning and licensing frameworks to link together more closely. However, putting planning committees in charge of licensing decisions will not tackle current flaws in the Licensing Act, and completely fails to take account of the pressures the planning system is also under.

“It is disappointing that the Committee has not recommended that the Act should be amended to include a public health objective to help councils protect their communities better. Nearly 90 per cent of Directors of Public Health support such an inclusion, which would help councils take health issues into account in licensing decisions.

“We disagree that the Late Night Levy should be scrapped as it has helped to address the shortfall in income that otherwise prevents councils from putting innovative ideas into practice. We would urge more time to be given to consider the effectiveness of late night levies applied to premises in more localised “hotspots”, rather than across whole local authority areas.

“Nationally-set licensing fees have forced councils to subsidise this work by £10.3 million a year, and we support the recommendation to set fees locally.

“With many councils already making use of more scope to use licensing policy to shape local areas, no legislative change is needed. Licensing and planning are fundamentally different functions which should remain separate.”

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<sup>i</sup> <https://www.local.gov.uk/public-health-and-licensing-process>

<sup>ii</sup> [http://www.local.gov.uk/web/guest/regulatory-services-and-licensing/-/journal\\_content/56/10180/7886724/ARTICLE](http://www.local.gov.uk/web/guest/regulatory-services-and-licensing/-/journal_content/56/10180/7886724/ARTICLE)

<sup>iii</sup> This survey has been separately submitted to the Committee following the LGA's oral evidence.