

**TO: LICENSING AND SAFETY COMMITTEE**  
**6 OCTOBER 2016**

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**SELECT COMMITTEE REVIEW OF LICENSING ACT 2003**  
**Chief Officer: Environment and Public Protection**

**1 INTRODUCTION**

- 1.1 A House of Lords Select Committee on the Licensing Act 2003 was set up on 25 May 2016 with the task of conducting post-legislative scrutiny of the Act. The Committee will be looking at the provisions of the Act, in its original form and with its subsequent amendments, at its implementation, and at related developments. The Committee has to report by 31 March 2017.
- 1.2 A public call was issued for written evidence to be submitted to the Committee by 2 September 2016. Officers from across all Berkshire licensing authorities have provided input and this has been consolidated into a joint response, which can be found at Annex A.

**2 SUPPORTING INFORMATION**

- 2.1 The Committee said the following in its call for evidence:

“The Licensing Act 2003 was intended to provide a means of balancing the broad range of interests engaged by licensing decisions - those of the entertainment and alcohol industries, small and large businesses, local residents and communities, policing, public health, and the protection of children from harm. Decision making under the Act was expected to balance these interests for the public benefit, rather than identify a ‘winning’ or ‘losing’ side.

The Government said: “Our approach is to provide greater freedom and flexibility for the hospitality and leisure industry. This will allow it to offer consumers greater freedom of choice. But these broader freedoms are carefully and necessarily balanced by tougher powers for the police, the courts and the licensing authority to deal in an uncompromising way with anyone trying to exploit these greater freedoms against the interest of the public in general.”

The Committee would welcome general views on whether the Act has achieved these objects.”

**3 EQUALITIES IMPACT ASSESSMENT**

- 3.1 None.

**4 STRATEGIC RISK MANAGEMENT ISSUES**

- 4.1 None.

Background Papers

None

Contact for further information

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***This is the response of the Berkshire Licensing Liaison Group – the core members of which are as follows:***

- Bracknell Forest Borough Council
- Reading Borough Council
- Royal Borough of Windsor & Maidenhead
- Slough Borough Council
- West Berkshire District Council
- Wokingham District Council
- Thames Valley Police

***Licensing objectives***

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?

It might be possible for the protection of health and wellbeing to merge with the public safety objective? As this could cover a multitude of aspects of both physical and mental health, guidance would be required to explain what could be taken into consideration.

Unfortunately since PH became a responsible authority there has been very little in the way of responses from them to any type of application, so it is unclear whether they would have the resource or ability to respond should protection of health and wellbeing become a licensing objective.

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?

We are of the opinion that our main agenda has to be public protection rather than enjoyment of the activities. Deregulations have already changed the Act to the extent that most community events aren't in need of a licence for entertainment.

***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?

The Live Music Act has gone far enough – this has caused some issues with alleged noise nuisance from school events, etc.

We are not of the view that LNLs and EMROs are appropriate for our area, but have seen that the BID process is growing in popularity so perhaps each type of tool has its place.

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?

Some do, some don't. There is little input from Planning at some local authorities, and same for Public Health. EH and TS tend to be fairly well involved and there are some examples of good joint working to advise businesses at the point of application.

Licensing authorities can and do work with their colleagues in Trading Standards in respect of the Primary Authority scheme.

Licensing should be able to object to TENs, in particular for premises where there is a history of non-compliance or where there are valid concerns about a specific event.

### ***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?

We are of the view that Planning is the main strategy to shape the landscape – Licensing is simply ensuring licensable activities take place appropriately to ensure promotion of the licensing objectives. There are examples of good work with Communities teams to ensure a diverse range of events.

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?

We do not see how licensing policy and planning policy can be more integrated as they are distinct regimes. However CIZ can assist in ensuring that a town can be designed as the local authority sees fit

### ***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?

We have no problem with our local police licensing officers who do a great job, despite ever dwindling resources and lack of capacity which can have an impact. However we do have concerns that some neighbourhood officers lack knowledge of the Licensing Act and it has been known for officers to try to use Licensing authorities and TVP licensing officers to address other issues that are not within the Act or our remit.

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?

We cannot see a good reason why they are exempt. There may be difficulties in licensing moving transport, but not at terminals/transport hubs.

**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?

Deregulation has made the entire system more complicated; the Act is now too complex for some local authority officers to understand, let alone applicants.

Application forms should be amended – especially the online forms, to ensure they are as simple as possible.

If the application is amended in the middle of the process (such as to add additional agreed conditions) there should be no need to ratify these at a sub-Committee hearing – so conditional withdrawal of representations should be permitted.

We would also recommend removal of the newspaper advert for new and variation licence applications. These are not useful to members of the public. The need for a notice at the premises should remain and there is always the ability for a local authority to do their own notification should they feel it appropriate.

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?

Formal mediation can be useful and should be the first port of call – sometimes this can narrow the issues to be considered. Once an appeal has been lodged, good mediation is a useful tool, enabling both sides to come to an agreement, as long as the grounds for the appeal are not too complex and the decision being appealed was not grossly disproportionate. If agreement can be reached then this can be dealt with by way of a consent order or remit the matter back to the Licensing Panel or Sub Committee which reduces costs for all parties involved.

The current delay in getting a court date can mean the position changes significantly by the time of the hearing.

Appeal decisions should not be automatically reported as each matter needs to be dealt with on its own merits and a consent order may stipulate that there should not be any press coverage.

There should not be any further appeal to the Crown Court as that involves extra costs and work for all parties involved.

***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?

Delivery services that purchase from licensed shops and then deliver to residences are not currently adequately covered by the legislation.

Underage sales is adequately policed – the powers are there although resources are becoming more scarce – although having said that, prosecution is too slow and cumbersome to deal with the offence. On some occasions now, matters are dealt with by way of a simple caution or fee paid training.

We are of the view that people will drink strong alcohol if they want to do so. Why target off-sales separately?

### **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?

We do not believe this will have a significant impact and feel the mandatory conditions are sufficient. There is no need for further control which would place additional burdens on already stretched service areas.

### ***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?

No – the costs everywhere are different and should be set locally – perhaps with a cap. This is not just a matter which affects cities. The LGA/CIPFA survey has showed that our costs are not being fully covered and therefore the taxpayer is subsidising the system.

For TENs, for example, where there is a need for a hearing, this is likely to cost the local authority circa £2000. The £21 doesn't really cover it. TENs ought to be reconsidered as a 499-attendee weekend-long music festival is likely to cause issues and therefore proceed to a hearing to consider objections from EH/Police – we cannot believe that this is really what the TEN process was intended to cover.

### ***Other comments***

Personal licences are a massive issue for local authorities. A central database is a necessity. Also, Courts have no idea of their powers and the number of revocations is pitifully low.

We do not believe that the courts have not been correctly trained, if at all, on the Licensing Act so they are reliant on having a clerk who may or may not understand the system.