

22 November 2017

Government response to House of Lords Select Committee post legislative scrutiny of the Licensing Act 2003

Purpose of report

For discussion and direction.

Summary

Government's response to the House of Lords Select Committee review of the Licensing Act made it clear that they will not be progressing two of the LGAs key policy asks around localisation of licensing fees and a Public Health objective in the near future.

The focus of this paper is to summarise the key recommendations made by the Select Committee and the government's response to these, as well set out some options for next steps in the short term, whilst being conscious that key policy asks remain the same.

Recommendations

Safer and Stronger Communities Board members are asked to:

1. Note the key recommendations of the House of Lords Select Committee and Government's response to these; and
2. Provide a steer on suggested next steps.

Action

Officers to action as appropriate.

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Background

1. A House of Lords Select Committee was established to undertake post-legislative scrutiny of the Licensing Act 2003, reporting its findings in April 2017. The LGA gave both oral and written evidence to the Select Committee outlining the LGA's key asks around a public health objective and locally-set licensing fees. We also identified a number of technical changes to legislation that would assist licensing authorities to deliver their services more efficiently and effectively, but set out our view the Act is fundamentally sound and does not require a major overhaul.
2. The Committee's key recommendation was for council licensing committees to be scrapped, and their functions transferred to planning committees. Our response at the time was robust, arguing that the recommendation was unnecessary and ill-advised, failing to 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. Whilst the Committee agreed that licensing fees should be localised, they did not support the call for a health objective.
3. The government have now published their response to the Committee's report. Government shares the LGA's view that overall the Act provides a good framework and does not, as the Committee's report suggested, require a complete overhaul. The Government rejected the Committee's recommendation to merge the licensing and planning systems and instead puts forward suggestions for how coordination between licensing and planning committees can be improved. Overall, where the Committee's recommendations were accepted, the government opted for using existing tools, for example clarifying points of practice in the statutory (Section 182) guidance to deliver improvement – rather than amendments to legislation.
4. In terms of the LGA's key policy asks, we were disappointed that the government did not make any commitment to introduce a health objective or to localise licensing fees in the immediate future. The key recommendations from the report are explored in further details in the next section.

Issues

Key recommendations

5. **Transferring the functions of licensing committees and sub-committees to planning committees** was the headline recommendation from the Committee who felt they had seen and heard about poor examples of practice by licensing committees. Government did not accept this recommendation but suggested that better coordination between planning and licensing could be achieved through training and guidance around how licensing hearings should be conducted.
6. The Committee has asked the Raynsford Review, which is currently looking at reform to the planning system, to take licensing into consideration. The LGA's submission to the review has included our view that whilst planning and licensing should be kept separate, there is scope for planning and licensing frameworks to link together more closely. The

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LGA's 'Rewiring Licensing' report (2014) recognised that whilst the distinction between planning and licensing functions needs to be clear, it is also important for functions to be aligned operationally to provide a joined up and customer focused service to businesses. Many councils are already exploring opportunities to improve customer service for businesses in this area, for example by joining up planning, licensing and other advice at an early stage through pre-application advice services. The LGA's forthcoming Licensing Act handbook will include such examples.

7. **Minimum level of training for Councillors sitting on licensing committee** was a key theme running through the Lords report. Government supported recommendations around training of licensing committee members and committed to discussing with the LGA, 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 similarly for refresher training.
8. Subject to members' views, we propose to say clearly in the handbook that LAs should ensure no councillor should sit on a committee without undertaking formal training.
9. **Health as a licensing objective** is a long standing LGA policy ask. In theory, public health can contribute against any of the four existing licensing objectives, which makes them almost unique among responsible authorities. But in practice it can be difficult for them to be heard; an objective could resolve that and allow a much more straightforward contribution, without shutting down every premises as some in the industry fear.
10. There is strong support for a health objective among public health directors, with Public Health England (PHE) and among some in Parliament. However, the Committee did not recommend that a health objective should be introduced, suggesting that it would be too difficult to evidence at an individual premises level. Government's response supported this conclusion, and there is no indication that the government is going to take this forward; instead there will be a continued focus on improving public health's engagement with licensing.
11. PHE has undertaken a lot of work around this over the past few years and have worked closely with councils to develop an 'Analytical Support Package', which brings together various nationally available data and signposts to a range of databases and tools that can support public health in their role as a Responsible Authority, for example through creating interactive maps and reports.
12. Another key Government initiative has been Local Alcohol Action Areas (LAAAs). LAAAs were set up in 2014 to tackle the harmful effects of irresponsible drinking, particularly alcohol-related crime and disorder, and health harms. No funding was attached to the program and the intention was that LAAAs would drive partnership working in the areas, largely around introducing schemes like Pubwatch, Best Bar None, Community Alcohol Partnerships, and Purple Flag. The first phase, which included 20 councils, was launched in 2014 and a second phase (LAAA2) involving 32 councils launched early in 2017. The Home Office intend to share outcomes and best practice from the various areas involved in LAAA2.
13. **Localisation of licensing fees** in the Licensing Act is another long standing policy objective. These are currently set nationally, with rates unchanged since 2005, though the Police Reform and Social Responsibility Act 2011 makes provision for fees to be

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localised. The LGA has consistently argued that the current fees underestimate the costs councils incur in overseeing the Licensing Act, and should be set locally. There have been various reviews and consultations around localisation of fees over the last 10 years, and in 2015, Government asked the LGA to work with it to develop an evidence base on the costs to councils of overseeing the Licensing Act. We worked with CIPFA to undertake this survey, achieving a response rate of around 30 per cent. The survey indicated that some councils are in surplus on the Act, but others are losing a lot and overall local government is in deficit by around £10-12 million a year.

14. The Lords Committee was supportive of localisation of fee setting, however Government has not committed to any change in the near future despite the former Minister, Sarah Newton, appearing sympathetic to this issue. Separate meetings with Home Office officials suggest that controversy over the impact of business rates revaluation on pubs and other businesses earlier in 2017 have made it harder to achieve political agreement on this issue. The Home Office has indicated that they would be open to exploring the impact of a percentage uplift in fees, which is something the LGA could work with the Home Office on as a way we can secure an increase of fees in the short term, whilst retaining our ask around localisation of fees.
15. **Simplifying the application/ licensing procedure** has been another key policy ask following the Rewiring Licensing report. The Committee recommended that gov.uk should be developed so it works with local authority computer systems, with the view to its uniform adoption by all local authorities.
16. Government supported this recommendation, and some work has already begun on this with the Government Digital Service (GDS) launching a project to look at developing a new online licensing platform for local government. This was a surprise but a welcome one, and the LGA, Regulatory Delivery and the Home Office have been supporting GDS to link up with councils to inform this work and make sure the needs of councils are considered. Members will be kept informed as this work develops, central impetus is likely to prove helpful in pushing this agenda forward given the challenges for individual councils to lead this agenda.
17. Another step to simplifying the application procedure put forward in Rewiring Licensing that the Committee supported was the reform of public notices and that the requirement to display these should be removed and local authorities should use online notifications instead. However, the Government did not accept this proposal.
18. A database of personal licence holders is something that local authorities have been keen to see rolled out and Government suggested that they were keeping a close eye on the LGA's National Register of taxi/PHV licence revocations and refusals as a potential model to deliver this.
19. **Taxation and Minimum Unit Pricing (MUP).** The Lords recommended that if the Scottish policy is successfully introduced following legal challenges, and subsequent assessment shows it has been successful, that MUP should be introduced in England and Wales. Government's response suggested further assessment would be made once the outcome of the legal case between the Scottish Government and the Scotch Whisky Association had been decided, and any assessment of the policy's impact could be made. The Supreme Court ruling on MUP in Scotland was announced on Wednesday 15

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November; and the seven judges unanimously found the approach to be a 'proportionate means of achieving a legitimate aim.'

20. MUP has been discussed at this Board and Community Wellbeing Board meetings but it is not an issue on which the LGA has a consensus position. As alternative measures, the LGA has previously argued that the most effective intervention would be amendments to the HMRC duty regime; HM Treasury and HMRC could contribute significantly to lowering damaging levels of consumption by making use of their fiscal powers and responsibilities - for example by introducing tax breaks for the development of lower strength products.
21. The current system of duties and taxation has gone some way to addressing the sale of cheap high strength alcohol, for example through the ban on the sale of alcohol below duty plus VAT. Attempts have also been made to link levels of taxation more closely to strength – for example through new beer duties. More recently, the Treasury consulted on a new cider duty, targeted at cheap high strength white ciders, which was welcomed by the LGA as the availability of high strength ciders and their link to problem drinking has been an ongoing concern for local authorities – the outcome of the consultation is pending.

Financial Implications

22. Any additional work identified from this report will be met from existing resources.

Next steps

23. The LGA is developing a Handbook for Councillors on the Licensing Act and the Government has identified the Handbook as a tool to drive consistency of standards in terms of member training and conduct and promote coordination between planning and licensing.
24. We will continue to work with PHE to promote their Analytical Support Package and with the Home Office to support the LAAA2 program and disseminate any best practice coming out of this.
25. Members are asked to:
 - 25.1. Consider whether the LGA should work with the Home Office to seek to secure a flat-rate uplift on licensing fees, as an interim step whilst retaining the call for localisation of licensing fees.
 - 25.2. Comment on using the LGA Licensing Handbook and other tools to set expectations around training being completed before a member can sit on a committee, and the need for this to be refreshed at regular intervals.
 - 25.3. Agree to monitor the introduction of Minimum Unit Pricing in Scotland if the Scottish Government proceeds to introduce this policy, with a further update being brought back to the Board once it is possible to provide an initial evaluation of the policy's impact.