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The Licensing Act 2003 - fundamentally flawed and major overhaul required

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After just under a year's consultation, the House of Lords Select Committee on the Licensing Act 2003 (the Act) has published their report.

On 4 April 2017 the Committee reported that the Act "is fundamentally flawed and needs a major overhaul." The major piecemeal amendments made to the Act throughout its existence have added to the flaws. Whilst also reviewing the implementation, the Committee commented that, although this was substandard, that was predominantly due to the inadequate statutory framework.

The Committee has recommended a trial merger of licencing committees with planning committees; emphasising that the latter are well established and have better support from experienced staff. The Planning Inspectorate should decide licensing appeals rather than the magistrates' courts which granted the applications in the first place.

er recommendations relate to enforcement and administration, the Late Night Levy (LNL), Early Morning Restriction Orders (EMROs), Temporary Event Notices (TENs), Minimum Unit Pricing (MUP) and other policies to reduce excessive drinking.

When first introduced the Act was intended to create a coherent framework to govern the sale of alcohol and provision of late night refreshment and entertainment in an ever changing landscape of cultural norms. The large number of major amendments to the Act through its eleven years, drew attention to the need for post-legislative scrutiny.

The House of Lords set up a Select Committee on 25 May 2016, chaired by Baroness McIntosh of Pickering, to scrutinise the Act and how it has been implemented. Particularly the Committee reviewed the relationship of the Act and the pre-existing planning framework.

Systematic change and enforcement

- Planning Committees and Licensing Committees should be merged on a trial basis immediately and planning and licensing decisions should consider the other
- The system of licensing committees was a mistake which is now fraught with delays, inconsistencies and misuse of power whereas existing planning committees are "more effective and reliable, and are well-equipped to make licensing decision"
- The Planning Inspectorate should decide licensing appeals rather than the magistrates' courts. The structure and process for hearings, including sufficient time for parties to make representations, should be set out in the

s182 Guidance. Reasons should be published where a case is settled out of Court and if a licensing decision is to have immediate effect it should be taken at the full review hearing

- Local Authorities should set local license fees, considering the legality of fees above the cost of processing the application. Online applications should be available through gov.uk
- Councillors should be required to attend licensing training and minimum training requirements should be included in the s182 Guidance
- Licensing Committee Chairs should be responsible for enforcing standards of conduct on sub-committees and excluding members where appropriate under the s182 Guidance
- A national database for personal licence holders should be created and linked to the Police National Database. A dedicated police licensing staff (officers or civilian staff) should be created and trained.

Amendments to specific licences

- The Act should apply to sales at ports and airside at airports
- The LNL is fundamentally wrong and does not pay for the cost of policing itself. This should be repealed unless current amendments make a difference in the next two years
- EMROs should be repealed as no local authority has introduced them yet and plans for Group Review Intervention Powers should be abandoned
- Local Authorities should be able to object to TENs. The police or EHOs Guidance should object to simultaneous TENs applications for adjacent land to enable larger events. The requirements for TENs should be made clearer
- Applications for a premises license should also include a disabled access statement.

Reducing excessive drinking

- The Supreme Court is still considering whether MUP is legal.

If it is lawful, it will be introduced in Scotland. England and Wales should introduce MUP if it proves to be a successful measure in reducing excessive drinking.

- In the meantime, the Government should seek to control excessive drinking through tax, pricing measures and stronger enforcement of s141 (sale of alcohol to a person who is drunk)
- England and Wales should adopt Scotland's provisions for the off-trade and in the meantime, through the Guidance, adopt:
 - restrictions on multi-pack pricing
 - bans on 'buy one get one free' or other offers including free alcohol
 - restrictions on advertising drinks promotions
 - challenge 25 policies.

A Government Response to the Select Committee report is expected by 5 June 2017.

The Government can delay responding if they consider that the matter requires more in depth consideration or is dependent on external events. Due to the issues raised in the review, the Supreme Court decision on MUPs, and the focus on Brexit it is anticipated that the Government will delay response in this case.

Although the recommendations from the Select Committee carry considerable weight, the Government doesn't necessarily have to either accept them or act on them. Stakeholder reaction to the recommendations either way can add pressure to the Government to act, and it is therefore important that the industry continues to engage with the review.

Once the Government has made a response, there will be a debate in the House of Lords. The Lord Chairman and Select Committee can express dissatisfaction or support for the Government's response to particular recommendations. That debate is likely to take place in Autumn 2017.

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