

Calling time on the Licensing Act?



Jeremy Phillips discusses the recent report of the House of Lords' recommendations on the operation of the 2003 licensing legislation



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It seems only yesterday that New Labour floated before us the prospect of a café culture where the traditional British boozier would be replaced by the sophisticated array of female-friendly continental bars and bistros, much loved by licensing practitioners in oratorical full flow. How ironic then that their Lordships complete their review of this utopian vision as we teeter on the brink of waving a fond farewell to the continent and embracing cultures and markets further afield.

So it was that on 4 April 2017 the House of Lords Select Committee on the Licensing Act 2003 published its report, 'The Licensing Act 2003: Post-legislative scrutiny'. The committee should be congratulated for producing such a comprehensive analysis of the position in less than a year from its creation, unlike a forbear, the so-called Erroll Report, which took nearly twice as long to publish.

Summarising its views, the Lords Select Committee said that 'in the 11 years since the Act has been in force hardly a year has gone by without major piecemeal amendments to the Act. The Lords Committee, set up to scrutinise the Act, has concluded that it is fundamentally flawed and needs a radical overhaul, including the abolition of local authority licensing committees.' No pulled punches there then.

But what of the detailed analysis? Space does not permit a full examination of the recommendations, but here are a few of the headline findings chosen by the Select Committee.

Licensing authorities

'The government made a substantial error in creating new committees for local authorities to deal with

licensing. The evidence received about the poor operation of licensing committees was convincing and the committee was extremely concerned by what it heard.'

It is true to say that prior to the Licensing Act 2003 'the trade' was generally sceptical about the ability of local authorities to exercise the licensing function, particularly having regard to their mixed record in relation to so-called 'music and dancing' licences. While there have, of course, been some horror stories as often-underfunded councils attempted to tackle this role, there have equally been many instances where they have performed as intended, integrating licensing with their many connected functions in the community.

Coordination with planning

'Planning committees are more effective and reliable, and are well-equipped for making licensing decisions. They should take over the licensing function.

Coordination between the licensing and planning systems should begin immediately.'

This has always been something of a hobby-horse of mine. A case readily comes to mind where I represented a nightclub required to erect an acoustic smoking shelter to accommodate some vocal locals. We had two hearings that were almost identical: the first for the variation of the premises licence and the second in relation to planning consent. When I pointed out to the licensing officer that section 7(5) of the 2003 Act already authorised the delegation of such functions to other local authority committees (and vice versa), I was told that it was a matter of 'territory' and councillors would fight to the death to defend their specialist preserve.

Exclusion of magistrates

'Licensing appeals should no longer go to magistrates' courts but should, like planning appeals, go to the planning inspectorate.'

Magistrates exercised a role in licensing for over 500 years before that function was wrested away in the spirit of greater democratic accountability. Historically, of course, before the relatively recent arrival of local authorities, magistrates did have a much greater say in the local community. They were (and are) also acutely aware of the close relationship between crime and alcohol (Alcohol Concern claims alcohol-related crime in the UK is estimated to cost between £8bn and £13bn a year). Equally, for the vast majority of law-abiding men and women, alcohol is an important – not to say, for some of us, essential – element of our social and leisure activities.

In their present appellate role magistrates' courts are now a very pale reflection of their former glory as licensing justices. Appeals from licensing authorities are relatively rare and consequently courts appear to attach little importance to this sad vestige of their historic position. Unless they demonstrate a real desire to remain involved (and it does seem somewhat remarkable that the Magistrates' Association, which one might think was a key stakeholder in the process, did not even submit a written representation to the committee), perhaps the time has indeed sadly come to consign their role to history.

Late night levy/EMROs

'The late night levy does not pay for the cost of policing as intended, and in its current form is fundamentally wrong in principle and in practice. Unless amendments already made prove effective, the late night levy should be repealed. So should early morning restriction orders, which no local authority has yet introduced.'

The select committee was critical of the late night levy in its original form – and rightly so. The complexity of the process and allocation of the financial benefits have meant that since their creation, only nine of 350 local authorities in England and Wales have introduced a levy.

During the course of the inquiry the committee learned of the provisions in the Policing and Crime Act (which received royal assent on 31 January 2017) allowing councils to target levies at particular problem zones, without applying them elsewhere. The changes would also allow councils to apply the levy to late night refreshment providers (currently exempt) and require local authorities to publish information on how funds raised by the levy funds are spent. The committee

subsequently received categorical assurances that the provisions would not be implemented until the government has considered and responded to the recommendations in its report.

Locally set fees

'Fees for licensing should be set locally, not nationally. In doing so, local authorities must bear in mind that there are doubts about the legality of any element of a fee which goes beyond what is needed to process the application.'

This recommendation has caused concern in some quarters, with it being even suggested by the British Beer and Pub Association that there would be a temptation for local councils to 'gold plate' their own licencing regimes at the expense of small local businesses. The association called for a national cap on fees and a 'level playing field for on-trade and off-trade retailers'.

Minimum pricing

'The legality of minimum unit pricing is still under consideration by the Supreme Court. If it is found to be lawful and is introduced in Scotland, and is found to be effective in cutting down excessive drinking, England and Wales should follow Scotland's lead.'

Issues of European jurisprudence, well beyond the scope of this brief summary, apply here. The committee said: 'We recognise that MUP cannot be brought into force... until the Supreme Court has ruled on the appeal by the Scotch Whisky Association. If that appeal succeeds, it will not be possible to introduce MUP at all... unless and until the relevant Treaty provisions cease to apply on the UK leaving the European Union. If and when MUP is introduced in England and Wales, we believe that the change will be best made as a stand-alone legislative provision.'

Disabled access

'Scotland's example should also be followed in helping disabled people to access licensed premises by requiring an application for a premises licence to include a disabled access statement.'

Hear, hear!

In my next licensing review I will focus on the many changes to licensing law which came into effect on 6 April 2017 as a result of (respectively): the Deregulation Act 2015 (end of personal licence renewals), the Immigration Act 2016 (illegal working in licensed premises), and the Policing and Crime Act 2017 (including summary reviews and interim steps). I will also report on the big fight currently taking place in the Court of Appeal: *Greene King v The Gambling Commission*. **SJ**



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