

## HOUSE OF LORDS

Select Committee on the Licensing Act 2003

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Report of Session 2016–17

# The Licensing Act 2003: post-legislative scrutiny

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### *Select Committee on the Licensing Act 2003*

The Select Committee on the Licensing Act 2003 was appointed by the House of Lords on 25 May 2016 to consider and report on the Licensing Act 2003.

#### *Membership*

The Members of the Select Committee were:

[Lord Blair of Boughton](#)

[Lord Brooke of Alverthorpe](#)

[Lord Clement-Jones](#) (resigned 14 June 2016)

[Lord Davies of Stamford](#)

[Baroness Eaton](#) (appointed 13 September 2016)

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See Appendix 1.

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Q in footnotes refers to a question in oral evidence.

## SUMMARY

The Licensing Act 2003 revolutionised the law governing the sale of alcohol. It came into force in November 2005 and has therefore been in force for 11 years. In that time hardly a year has gone by without major amendments to the Act, and it is therefore ripe for post-legislative scrutiny.

Alcohol, in moderation, can enhance community cohesion. In excess, it is harmful to the health of the consumer and can damage the community. The state has a duty to ensure that alcohol is sold only at appropriate premises, by those who are alive to their responsibilities to customers and the community alike. For five hundred years the licensing of persons and premises was the task of justices of the peace. Those who devised the new policy in 2000 thought, rightly, that this was not a task for the judiciary but for local administration. If they had looked to see how local authorities regulate the responsible use of land in other situations, they would have seen that the planning system, already well established and usually working efficiently, was well placed to take on this additional task.

Instead the legislation established new licensing committees for each of 350 local authorities. The councillors sitting on these new committees, and the staff assisting them, had no experience of the complex new law they were administering. Our evidence shows that, while most members of licensing committees no doubt attempt to apply the law justly and fairly, too often standards fall short. Many councillors have insufficient training; all should undertake compulsory training. We were told of cases of clear inadequacies in fulfilling their functions, resulting in a haphazard decision-making process.

The planning system has its detractors, but planning committees are well established, with better support from experienced staff. Our main recommendation is that there should be a trial merger of licensing committees with planning committees. To be clear, we are not recommending a merger of licensing law and planning law; we are suggesting that the councillors who sit on planning committees, using the same procedure and practice and with the same support as they already have, should deal with proceedings under the Licensing Act in the same way that they already deal with planning legislation.

Appeals from decisions of licensing committees now go to the same magistrates who, until 2005, dealt with the applications. This not only defies logic; it leads to unsatisfactory results, as many of our witnesses have testified. Planning appeals go to inspectors who have the training for this, and for whom this is a full time job. We recommend that they should hear licensing appeals as well.

Since 2005 there has been a gradual but significant decrease in crime committed by persons under the influence of alcohol. It has been accompanied by amending legislation greatly increasing the powers of police: among them closure powers, and powers of summary and expedited review. We do not dispute that in some cases police will need those powers, but they must be accompanied by appropriate safeguards when the livelihood of the licensee is at risk. There is already case law showing that the police powers are not as far-reaching as they think. The police should not exceed their powers, and magistrates must be given better supervision of the exercise of those powers.

Another major change has been in the proportion of sales by the off-trade. In 1994, 58% of alcohol was sold by the on-trade and 42% by the off-trade. By 2005, when the Act came into force, the position was reversed, and today 70% of alcohol is sold through off-licences and supermarkets. Their lower overheads, and the volumes that they sell, mean that supermarkets can sell high strength alcohol at very low prices, and this is seen as one of the causes of the worst anti-social behaviour and disorder. We believe that voluntary responsibility deals and local schemes do not do enough to tackle the problem, but the introduction of blanket bans across a whole local authority area is not the answer. Scotland has introduced a range of more sophisticated measures aimed at how the off-trade sells alcohol, and we believe these should be followed in England and Wales.

The later opening hours introduced by the Act, including the possibility of 24-hour opening, have led to a thriving night-time economy in many cities, and we do not doubt the importance of this. A number of powers have been offered to local authorities to deal with the associated problems. Early Morning Restriction Orders were only the latest initiative, but they are seen as complex and draconian. No local authorities have introduced them, and they should be repealed. Only nine local authorities have introduced Late Night Levies, about which most of our witnesses were equally dismissive. These too should be repealed unless changes which have been made but have yet to be brought into force show that they could be made effective.

The Act still needs to be enforced, and police and local authorities need resources for this. Currently those resources come from an element of the licence fee and from fee multipliers. They impose on the licensee costs greatly in excess of what is needed to process an application, and recent case law throws doubt on whether any such additional costs are lawful under the EU Services Directive. The future of these elements of the fees must be in doubt.

The Act deals with many other important matters, including Temporary Event Notices, live music, and airside and portside sales. On all of these we have made recommendations.

Previous committees of this House conducting scrutiny of statutes have found that the Act in question is basically satisfactory, but that its implementation is not. In the case of the Licensing Act our conclusion is that, while the implementation of the Act leaves a great deal to be desired, to a large extent this is caused by an inadequate statutory framework whose basic flaws have, if anything, been compounded by subsequent piecemeal amendments. A radical comprehensive overhaul is needed, and this is what our recommendations seek to achieve.

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# The Licensing Act 2003: post-legislative scrutiny

## CHAPTER 1: INTRODUCTION

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### Constitution and Terms of Reference of the Committee

1. The Vagabonds and Beggars Act 1494, an Act of the 5th Parliament of Henry VII, created the right of Justices of the Peace to control the sale of alcohol.<sup>1</sup> This practice lasted over 500 years, until the Licensing Act 2003 transferred this duty to local authorities, acting through licensing committees. The Act<sup>2</sup> made many other seminal changes. Among the most important, it changed the criteria against which licences would be granted to the four licensing objectives; it created the dual system of personal and premises licences; it liberalised the hours during which alcohol could be sold; and it did away with the need for the temporary licensing of occasional events.
2. This change did not happen overnight. As we explain in more detail in the following chapter, it took seven and a half years from the first announcement of a wholesale reform of licensing law before the Act came fully into force on 24 November 2005.
3. It was suggested to the House of Lords Liaison Committee that the Act, which had been in force 10 years, would make a fruitful topic for post-legislative scrutiny, and in March 2016 the Committee agreed.<sup>3</sup> On 25 May 2016 the House appointed us as a Committee “to consider and report on the Licensing Act 2003”.<sup>4</sup>
4. The timing is important. When the House of Lords Constitution Committee recommended in 2004<sup>5</sup> that Government departments should carry out post-legislative scrutiny of all significant primary legislation, other than Finance Acts, they suggested that this should take place three years after the entry into force of the Act. In their response (in March 2008, some four years later) the Government undertook to provide a memorandum between three and five years after Royal Assent.<sup>6</sup> Also in March 2008 the Department

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1 “And that it be lauffull to ij of the Justices of the peas whereof oon shalbe of the Quo[rum] w’in their auctorite to reiecte and put away comen ale selling in Tounes and places where they shall thinke convenyent, and to take suertie of the keps of ale houses of their gode behaving by the discrecion of the seid Justices, and in the same to be avysed and agreed at the tyme of their Sessions.” (11 Henry VII c.2; Statutes of the Realm, vol II, p.569) Although the date of the Act is always given as 1494, it was enacted by the 5th Parliament of Henry VII which did not meet until 14 October 1495.

2 In this report, references to the “Licensing Act”, “the 2003 Act”, or simply “the Act” are references to the Licensing Act 2003, unless the context otherwise requires. Home Office documents frequently refer to “LA2003”.

3 Liaison Committee, *New investigative committee activity* (3rd Report, Session 2015–16, HL Paper 113) paragraphs 15-19

4 The membership of the Committee is set out in Appendix 1.

5 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173-I)

6 Office of the Leader of the House of Commons, *Post-legislative scrutiny: The Government’s Approach*, Cm 7320, March 2008, Appendix, paragraph 16: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228516/7320.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228516/7320.pdf) [accessed 10 March 2017]

for Culture, Media and Sport<sup>7</sup> provided an evaluation of the Act<sup>8</sup> which formed the basis for scrutiny by the Commons Culture, Media and Sport Committee. Their brief report was published in May 2009,<sup>9</sup> but based on evidence taken in October and November 2008 when the Act had been in force for less than three years. However no Committee of this House has carried out post-legislative scrutiny of an Act which has been in force for less than five years; most have been in force longer, and for an Act which made such major changes, we think that the 10 years which had elapsed since its entry into force provide a basis for a fuller and more rational examination.

5. The task of a post-legislative scrutiny Committee is not confined to the Act which is the subject of the scrutiny. Such a Committee invariably also considers related legislation (both primary and secondary), and the implementation of the legislation. In the case of the Licensing Act there is also a great deal of important guidance involved, both statutory and non-statutory.
6. The Liaison Committee suggested that policy aspects which this Committee could consider might include:
  - To what extent has the Licensing Act met its objective of balancing rights and responsibilities?
  - Are the four licensing objectives underpinning the Act the right ones?
  - Has the Act proved sufficiently flexible to address changing circumstances?
  - What lessons can policy makers draw from the changes made to the licensing regime since its implementation in 2005?

As will be clear from this report, we have seen it as our task to consider all these matters, and many more.

### *The devolved administrations*

7. The Act applies only to England and Wales. Under the Government of Wales Act 2006,<sup>10</sup> local government is a devolved matter, but “Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment” is an exception to this. The Wales Act 2017 proceeds, as in Scotland, on the basis that all is devolved unless expressly reserved; and one matter to be reserved is “the sale and supply of alcohol”<sup>11</sup>—not just licensing.<sup>12</sup> It seems

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7 Although the Home Office is now the responsible department, and was when the original decision was made in 1998 and the White Paper was issued in 2000, between 2001 and 2010 the responsibility was that of DCMS. DCMS remains responsible for entertainment licensing.

8 DCMS, Evaluation of the impact of the Licensing Act 2003 (March 2008): <http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.culture.gov.uk/images/publications/Licensingevaluation.pdf> [accessed 10 March 2017] This was in fact the product of an undertaking given by the Secretary of State when the first Guidance under section 182 of the Act was issued, and pre-dated the practice of issuing formal post-legislative memoranda.

9 Culture, Media and Sport Committee, *The Licensing Act 2003* (Sixth Report, Session 2008–09, HC 492)

10 Section 107 and Schedule 7, exception to matter 12.

11 Paragraph 56 of Schedule 7A to the Government of Wales Act 2006, to be inserted in the 2006 Act by the Wales Act 2017, Schedule 1, in substitution for Schedule 7 to the 2006 Act.

12 So that, for example, the setting of a minimum unit price for alcohol in Wales, which under the current legislation is arguably for the devolved administration (as indeed it has argued), will unarguably be a matter for the United Kingdom Government. See further paragraphs 68–87.

that the words “licensing of” have been deliberately omitted, since they have been retained in the reserved matter “Licensing of (a) the provision of entertainment, and (b) late night refreshment”.<sup>13</sup> It follows that in Wales, as in England, licensing of the sale and supply of alcohol, of the provision of entertainment and of late night refreshment, are, and will continue to be, matters for the Westminster Government and Parliament.

8. In Scotland licensing is a devolved matter, governed by the Licensing (Scotland) Act 2005, as amended in particular by the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010, and the Alcohol (Minimum Pricing) (Scotland) Act 2012. Applications for licences are made to licensing boards of each council (or of each licensing division of the council). In Northern Ireland the current licensing law is the Licensing (Northern Ireland) Order 1996<sup>14</sup> under which applications for licences are made to a county court. Although our recommendations relate only to England and Wales, we hope that Scottish and Northern Irish Ministers may nevertheless find them useful.

#### *Our working methods*

9. We began by inviting the Home Office to prepare a formal memorandum for post-legislative scrutiny of the Act, which they published in June 2016.<sup>15</sup> Paragraph 2 states that the memorandum “is intended to provide Parliament with: an update on developments since the LA2003 was introduced [sic] in 2005; and the most recent assessment of how the LA2003 has operated since commencement, relative to objectives and benchmarks”.
10. We issued a call for evidence on 30 June 2016,<sup>16</sup> and in response we received and accepted as evidence 175 submissions. They are published on our website. We heard oral evidence from 65 witnesses, and from some of them we received supplementary written evidence. Some who had already sent us written evidence would have liked to expand on their views in oral evidence; we were sorry that the constraints of time did not always allow this. The witnesses are listed in Appendix 2. To all of them we are most grateful. Their evidence was invaluable, and forms the basis of our work.
11. On 15 September 2016 five members of the Committee visited Southwark Borough Council. We attended a meeting of the licensing sub-committee and observed the proceedings, and subsequently met Councillor Renata Hamvas, the Chair of the Licensing Committee, and licensing officers for discussion of the licensing process as operated by Southwark Borough Council. We are most grateful to them for their time. A note of the visit is at Appendix 4.

#### *Acknowledgements*

12. During the course of our inquiry we have been fortunate to have as our specialist adviser Sarah Clover. She is a barrister whose encyclopaedic

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13 Paragraph 55 of Schedule 7A to the Government of Wales Act 2006, to be inserted in the 2006 Act by the Wales Act 2017, Schedule 1, in substitution for Schedule 7 to the 2006 Act.

14 Licensing (Northern Ireland) Order 1996 ([SI 1996/3158](#)) ([N.I. 22](#))

15 Home Office, *Memorandum to the House of Lords Select Committee: Post-legislative Scrutiny of the Licensing Act 2003*, Cm 9278, June 2016: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530664/Cm\\_9278\\_-\\_Post-Legislative\\_Scrutiny\\_-\\_Licensing\\_Act\\_2003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530664/Cm_9278_-_Post-Legislative_Scrutiny_-_Licensing_Act_2003.pdf) [accessed 10 March 2017]

16 See Appendix 3.

knowledge of licensing, planning and regulatory law has been invaluable to us.<sup>17</sup> We are most grateful to her for her exceptional contribution to our work.

*The next steps*

13. While our inquiry was progressing, the Bill for the Policing and Crime Act 2017, which makes substantial amendments to the Licensing Act, was passing through Parliament. Some of these amendments related to matters we were considering. Ministers have undertaken not to bring these provisions into force until they have considered this report and responded to it.<sup>18</sup>
14. Sessional committees, whose appointment continues from one session to the next, can follow up their reports with subsequent reports analysing the Government's response, and can summon ministers to give evidence to explain their action or inaction. Committees like ours, set up to report to the House on a single issue, cease to exist when they have agreed their report, and in the past have been able to rely only on debates and questions in the House to follow up their reports. However the Liaison Committee now follows up the recommendations of *ad hoc* committees; we hope that they will follow up our recommendations where necessary.

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<sup>17</sup> As a barrister practising in these fields, she has acted as Counsel in a number of the cases to which we refer in this report. Her interests are listed in Appendix 1.

<sup>18</sup> See further paragraphs 500–501.

## CHAPTER 2: THE ACT—AN OVERALL PERSPECTIVE

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### Introduction

15. We begin this chapter by looking at the background to the Act and the development of the Government’s policy. We then outline the provisions of the Act, including its many amendments, culminating in those made by the Policing and Crime Act 2017. We then consider the difficult relationship between licensing policy and alcohol policy. Finally we look at the views of some of our witnesses on whether, overall, the Act is working satisfactorily to achieve its intended purpose.

### The Act: Background

16. Prior to the 2003 Act, the principal legislation governing the licensing of the sale of alcohol was the Licensing Act 1964. It was a consolidation Act and, like earlier statutes, it adopted a restrictive approach to the “retail sale of intoxicating liquor”. An applicant for a licence had to demonstrate to the licensing justices for the relevant petty sessional division<sup>19</sup> that he was a “fit and proper person” to hold a licence. The hours during which alcohol could be served were strictly (and not very rationally) limited to 11.00 am to 11.00 pm on Mondays to Saturdays, 12 noon to 10.30 pm on Sundays and Good Friday, and on Christmas Day 12 noon to 3.00 pm and 7.00 pm to 10.30 pm. The justices had little discretion to extend these hours. The fact that there might be public demand for longer hours played no part; matters were regulated by the State, and not by market forces. The sale of alcohol for occasional entertainment still required a temporary licence.
17. Public entertainments were licensed by local authorities under the Local Government (Miscellaneous Provisions) Act 1982 and the London Government Act 1963, and the provision of late night refreshment was licensed by local authorities under the Late Night Refreshment Houses Act 1969. There were other provisions in five other statutes<sup>20</sup> and a large amount of secondary legislation.
18. On 5 May 1998 George Howarth MP, the responsible Minister in the Home Office, announced a review of the liquor licensing laws. This involved all key stakeholders: the police, magistrates, local authorities, industry and interested groups. The review continued until 1999 and led to the White Paper *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*<sup>21</sup> which was published on 10 April 2000 for a three month public consultation which generated just over 1,200 responses.
19. Also in 1998, a sub-group of the Better Regulation Task Force (BRTF), chaired by the Association of Chief Police Officers, reviewed the licensing laws. Their work led to the BRTF’s report *Licensing Legislation*, published in 1998. It recommended that the Government should reform the alcohol and public entertainment licensing laws; deregulate licensing; allow greater flexibility; and transfer responsibility from the magistrates to local authorities.

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19 That is, the area over which they had jurisdiction; since 2005 the “local justice area”.

20 [Private Places of Entertainment Act 1967](#), [Theatres Act 1968](#), [Local Government \(Miscellaneous Provisions\) Act 1982](#), [Cinemas Act 1985](#), and [London Local Authorities Act 1990](#).

21 Home Office, *Time for Reform: Proposals for the Modernisation of our Licensing Laws*, Cm 4696, April 2000

20. In May 2001 the Home Secretary announced his intention to legislate to reform the laws with only minor adjustments to the original White Paper proposals. The Home Office was thus the department with primary responsibility for the changes in licensing policy. However on 8 June 2001, the Government transferred responsibility for licensing policy to the Department for Culture, Media and Sport. The Licensing Bill was introduced in the House of Lords in November 2002 and the Licensing Act 2003 received Royal Assent on 10 July 2003. The Act came fully into force on 24 November 2005, seven and a half years after the original announcement of the review of the law. The Home Office resumed responsibility for the Act in 2010.

### Outline of the provisions of the Act

#### *Licensing objectives and aims*

21. The Act aimed for the first time to bring clarity to the purposes for which activities were to be regulated. The statutory purpose of the system introduced is to promote four fundamental objectives (“the licensing objectives”). Those objectives are:
- the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.

We consider these further in Chapter 6.

22. Section 182 of the Act requires Ministers to issue Guidance to local authorities on their functions under the Act. They did so before the Act came into force, and it has been revised a number of times.<sup>22</sup> From the outset the Guidance has made clear that “the promotion of the four objectives is a paramount consideration at all times”,<sup>23</sup> but ministers have stressed that the legislation “also supports a number of key aims and purposes” which (in the latest version of the Guidance) include:
- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
  - giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
  - recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
  - providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and

22 Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003* (March 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418114/182-Guidance2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf). [accessed 10 March 2017] The latest version was issued in March 2015. This is the version we refer to in this Report.

23 Paragraph 1.4



- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.<sup>24</sup>
23. The Guidance states that these aims “are vitally important and should be principal aims for everyone involved in licensing work”.<sup>25</sup> Since it has statutory force, the aims cannot be departed from without good reason.
24. Currently the Guidance is subject to affirmative resolution. This will soon cease,<sup>26</sup> but the Guidance will continue to have statutory force. Many of our recommendations will require amendment of the Guidance.

#### *Licensable activities*

25. The Act regulates:
- the sale by retail of alcohol;
  - the supply of alcohol by or on behalf of a club to a member of the club;
  - the provision of regulated entertainment; and
  - the provision of late night refreshment (hot food and hot (non-alcoholic) drink between 11pm and 5am).
26. Schedule 1 to the Act defines “regulated entertainment” and lists exemptions. It has been amended a number of times, most significantly by the Policing and Crime Act 2009 for sexual entertainment venues, and by the Live Music Act 2012 which we consider in Chapter 11. Sexual entertainment venues are exempt from a premises licence under the Act, but only because they are regulated under the Local Government (Miscellaneous Provisions) Act 1982. If they wish to sell alcohol, they do still need to be licensed under the Licensing Act.<sup>27</sup>

#### *Premises*

27. The types of premises affected by the Act include:
- Public spaces such as market squares, village greens or open fields
  - Concert halls, theatres and cinemas
  - Restaurants, public houses and bars
  - Hotels, and some guest houses and B&Bs
  - Nightclubs, casinos and bingo halls
  - Canteens retailing alcohol
  - Supermarkets selling alcohol
  - Shops, convenience stores and garages retailing alcohol
  - Non-profit making clubs

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24 Paragraph 1.5

25 *Ibid.*

26 See paragraph 55.

27 See further paragraph 44.

- Village, church and community halls
- Indoor sports complexes staging sports entertainments
- Outdoor venues staging boxing and wrestling entertainments
- Late night cafés and takeaways (including vehicles, vessels and movable structures).

### *Licences*

28. Personal licences authorise individuals to sell or supply alcohol, or authorise the sale or supply of alcohol, for consumption on or off premises for which a relevant premises licence is in force. A personal licence is not required where the licensable activities are confined to entertainment or late night refreshment.
29. Premises licences set out the operating conditions relating to the use of the premises for licensable activities, in order to regulate the use of the premises in line with the licensing objectives. They will vary according to the risks individual premises present to the promotion of the four objectives. Under the previous licensing regime an applicant for a licence had to satisfy a demand test. One of the main changes made by the Licensing Act 2003 was that this test was removed. Under the Act an application for a licence has to be granted if no one makes a relevant representation, and grounds for refusal are limited to reasons based on the licensing objectives.
30. A premises licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period. Under the Licensing Act 1964 as originally enacted a licence had to be renewed every year, and although this was subsequently extended to three years,<sup>28</sup> the indefinite continuation of a premises licence was another significant change made by the 2003 Act.
31. Any person may make representations about an application for the grant of a premises licence, or about a variation or review. Most commonly these will be local residents and businesses, but there is no longer a “vicinity” test, so those living further afield but with an interest may also make representations. The responsible authorities which most commonly make representations are the police and environmental health, and the local authority itself. Such representations must concern “the likely effect of the grant ... on the promotion of the licensing objectives”<sup>29</sup> or, in the case of a review, must be “relevant to one or more of the licensing objectives”<sup>30</sup>—a lower test. Once the licence has been granted the same classes of persons and bodies may seek a review of the premises licence and the conditions attaching to it if problems occur which present a risk to the licensing objectives.

### *Club premises certificates*

32. Club premises certificates provide authorisation for qualifying clubs to use club premises for qualifying club activities. Such clubs tend to be, for example, political clubs, sports clubs, ex-services clubs, working men’s clubs and social clubs with at least 25 members. The qualifying club activities are

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28 By the [Licensing Act 1988](#)

29 Licensing Act 2003, [section 18\(6\)\(a\)](#)

30 Licensing Act 2003, [section 52\(7\)\(a\)](#)



a subset of the licensable activities: the supply of alcohol by or on behalf of a club to a member of the club, the sale by retail of alcohol by or on behalf of a club to a guest of a member for consumption on the premises, and the provision of regulated entertainment by or on behalf of a club for its members and guests. As with premises licences, the right to make representations on the application for a club premises certificate is given to a range of persons and bodies. We discuss this in more detail in Chapter 13.

#### *Temporary event notices (“TENs”)*

33. The 2003 Act established new arrangements for the carrying on of licensable activities at occasional or temporary events. These arrangements replace the multiple systems of “occasional permissions” and “occasional licences” which applied to the old alcohol and entertainment regimes. We consider TENs in Chapter 8.

#### *Reviews of licences and closure powers*

34. The Act allows interested parties and responsible authorities to ask the licensing authority to review premises licences and certificates if problems arise in relation to a licensing objective. Licensing authorities have the power, on review of a premises licence or certificate, to suspend or revoke the licence, to exclude specific licensable activities from the licence, to modify operating conditions attaching to the licence, and to require the removal of the designated premises supervisor.
35. Part 8 of the Act (sections 160–171) conferred powers on the police to close groups of licensed premises and individual licensed premises to deal expeditiously with disorderly behaviour and excessive noise; these powers were both anticipatory and reactive. However the Anti-social Behaviour, Crime and Policing Act 2014 repealed sections 161–166 and substituted a new power consolidating various existing closure powers relating to licensed and non-licensed premises which were causing, or were likely to cause, nuisance or disorder.<sup>31</sup> A closure notice that lasts for up to 48 hours may be issued by a police officer of at least the rank of superintendent, or someone designated by the chief executive officer of a local authority.
36. When a closure notice is issued, the police or local authority must apply to the magistrates’ court for a closure order. The magistrates’ court must hear the application for the closure order within 48 hours and can make a closure order for a maximum period of three months. Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents.
37. The powers on reviews and closures are among the most difficult and controversial that licensing committees have to exercise, and one of the chief sources of the criticisms of those committees. We explore reviews and closures in Chapter 9.

#### *Selling alcohol to children and purchase of alcohol by children*

38. Under the previous alcohol licensing regime, the laws governing sales of alcohol to children applied only to licensed premises. The Act made it an offence to sell alcohol to children under 18 anywhere, and abolished the

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<sup>31</sup> The Police Reform and Social Responsibility Act 2011 had already substituted provisions, but these were never brought into force, so that the first changes were those made by the 2014 Act.

arrangements which had made it lawful to sell alcohol to children in almost 20,000 non-profit making members' clubs, on river and coastal cruises, and on trains. Provisions which had allowed children over five to consume alcohol in around 25,000 restaurants and in areas in public houses away from the bar area (such as the beer garden) were also repealed.

39. It had also been lawful for children aged 16 or 17 to purchase and consume beer, porter and cider where they were consuming them with a table meal. These provisions were replaced with new provisions which allowed children aged 16 and 17 to consume (but not purchase) wine, beer and cider with a table meal where they were accompanied at the meal by an adult who had purchased the alcohol.
40. Test purchasing of alcohol sales to under 18s under the authority of police or trading standards officers was first made lawful by the Criminal Justice and Police Act 2001. These provisions were continued in the 2003 Act and have become central to campaigns since 2004 to tackle unlawful selling to children.

### *Enforcement*

41. The regime is supported by a range of inspection powers and enforcement provisions. Part 7 of the Act (sections 136–159) creates a large number of offences relating in particular to unauthorised licensable activities, drunkenness, disorderly conduct, and children and alcohol. Whether these enforcement powers are adequate and are sufficiently used is a matter we look at in Chapter 13.

### **Subsequent amendments to the Act**

42. One might have expected, and would certainly have hoped, that a completely new regime, devised after extensive consultation, would have been allowed to bed down without substantial amendment. A Home Office Minister, contemplating the Act at the time of its entry into force, might not have anticipated that his own department would as early as the following year be responsible for the first of six major Acts dealing with policing and crime which, in the space of 11 years, would each make significant changes to the Licensing Act.
43. The Violent Crime Reduction Act 2006 inserted three new sections<sup>32</sup> allowing summary reviews of premises licences in the case of serious crime or disorder, on the application of a senior police officer. These provisions have in turn been amended by the Policing and Crime Act 2017.<sup>33</sup>
44. The Policing and Crime Act 2009<sup>34</sup> created a new category of “sexual entertainment venue” which could be regulated under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as “sex establishments” already were. This resulted in the removal of lap dancing clubs from the regime of the Licensing Act to that of the 1982 Act.<sup>35</sup> The consequence is that premises for which a sexual entertainment venue licence is required under the Local Government (Miscellaneous Provisions) Act 1982 do not

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32 Licensing Act 2003, [sections 53A–C](#)

33 See paragraphs 422–431.

34 Policing and Crime Act 2009, [section 27](#)

35 See the Licensing Act 2003, [Schedule 1,11A](#) inserted by the Policing and Crime Act 2009, [Schedule 7, paragraph 23](#)

also require a premises licence, club premises certificate or TEN under the Licensing Act in order to provide relevant entertainment unless the premises also carry on other licensable activities (like the sale of alcohol or the provision of other regulated entertainment), as the great majority do.

45. The 2009 Act also added new provisions allowing the Secretary of State to specify mandatory conditions relating to the supply of alcohol if the Secretary of State considers it appropriate to do so for the promotion of the licensing objectives.<sup>36</sup>
46. Next came the Police Reform and Social Responsibility Act 2011. Its main contribution was the addition of five sections<sup>37</sup> on Early Morning Restriction Orders (EMROs). These repealed and replaced similar provisions which had been added the previous year by the Crime and Security Act 2010, but never brought into force. We explain in Chapter 10 why the provisions which are in force are of scarcely more value than those which were repealed without being brought into force.
47. The 2011 Act also included 15 sections<sup>38</sup> introducing the Late Night Levy (LNL). These provisions do not operate by amendment of the Licensing Act, but are as much part of the law on licensing as if they were included in that Act. Again, we consider this in Chapter 10. And finally, the 2011 Act also repealed the provisions on Alcohol Disorder Zones introduced by the Violent Crime Act 2006. Those provisions were in force for just four years.
48. Fifthly, the Anti-Social Behaviour, Crime and Policing Act 2014 contained major provisions on the closure of premises associated with nuisance or disorder, including licensed premises. We look at these in Chapter 9.

#### *Amendments in the Policing and Crime Act 2017*

49. As our inquiry progressed, so did the passage through both Houses of the Policing and Crime Bill, culminating in Royal Assent on 31 January 2017. When the relevant provisions are in force, the most important will be those dealing with the use of Cumulative Impact Policy (CIP), which we consider in Chapter 9, and yet further amendments to EMROs and to Late Night Levies (LNLs) (Chapter 10).
50. Attempts were made in both Houses, but unsuccessfully, to use this Bill as a means of amending the statutory licensing objectives. We consider this in Chapter 6.

#### *Deregulation*

51. The Legislative and Regulatory Reform Act 2006 allows ministers to make Orders “removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation”,<sup>39</sup>—in other words, removing red tape. Three Orders have been made amending the Licensing Act which respectively simplify applications for minor variations of premises

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36 See the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 ([SI 2014/2440](#)), made under section 19A of the Licensing Act 2003 which was inserted by the Policing and Crime Act 2009, and allowed amendment of the five mandatory conditions applicable to every off-licence (and, in the case of age verification, to on-licences as well).

37 Licensing Act 2003, [sections 172A–E](#)

38 Police Reform and Social Responsibility Act 2011, [sections 125–139](#)

39 Legislative and Regulatory Reform Act 2006, [section 1\(2\)](#)

licences or club premises certificates,<sup>40</sup> do the same for variations of licences for community premises,<sup>41</sup> and provide that in certain circumstances the provision of regulated entertainment will no longer need to be authorised under the Act. Examples are travelling circuses, incidental film, and entertainment put on by local authorities, health care providers and schools in their own premises.<sup>42</sup>

52. The Deregulation Act 2015 made a number of amendments, including those relating to TENs and those (not yet in force) dealing with Community and Ancillary Sellers' Notices (CANs). We consider both of these in Chapter 8.

### *Live Music Act 2012*

53. The Bill for the Live Music Act 2012 was introduced in this House by Lord Clement-Jones, who was briefly a member of this Committee, and piloted through the House of Commons by Don Foster MP, now Lord Foster of Bath and also a member of this Committee. It removed the licensing requirements for live music in a number of circumstances. We consider these in Chapter 11.

### *Conclusions*

54. A number of the recommendations we make in this report will involve amendments to the Act, some of them significant. Nevertheless **we think it unfortunate that in the 11 years since the full implementation of the Licensing Act there have been piecemeal amendments made by nine different Acts of Parliament, a large number of significant amendments made by other Acts and by secondary legislation, and further changes to licensing law and practice made by amendment of the section 182 Guidance.**
55. A significant amendment made by the Policing and Crime Act 2017 will mean that from 6 April 2017 the section 182 Guidance will no longer require Parliamentary approval.<sup>43</sup> This would restore the position to what it was when the Licensing Bill was introduced in the House of Lords in November 2002. **We regret that there will no longer be any opportunity for Parliament to scrutinise the Guidance in draft, nor even to ensure that there has been adequate consultation during its preparation.**

### *Changes in outlets and consumption*

56. Consumption of alcohol in this country has fluctuated wildly, from the gin-soaked back streets of eighteenth-century London depicted by Hogarth, through to the temperance movements of the nineteenth century and the low consumption prompted by the legislation of the First World War, to rising consumption from the 1960s, and to today's consumption which is anything but constant. There are changes in the numbers of outlets, in the types of outlets—in particular from on-licences to off-licences—in the consumption by different age groups and by geographical location, in alcohol-related crime and in alcohol-related hospital admissions.

40 Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 ([SI 2009/1772](#))

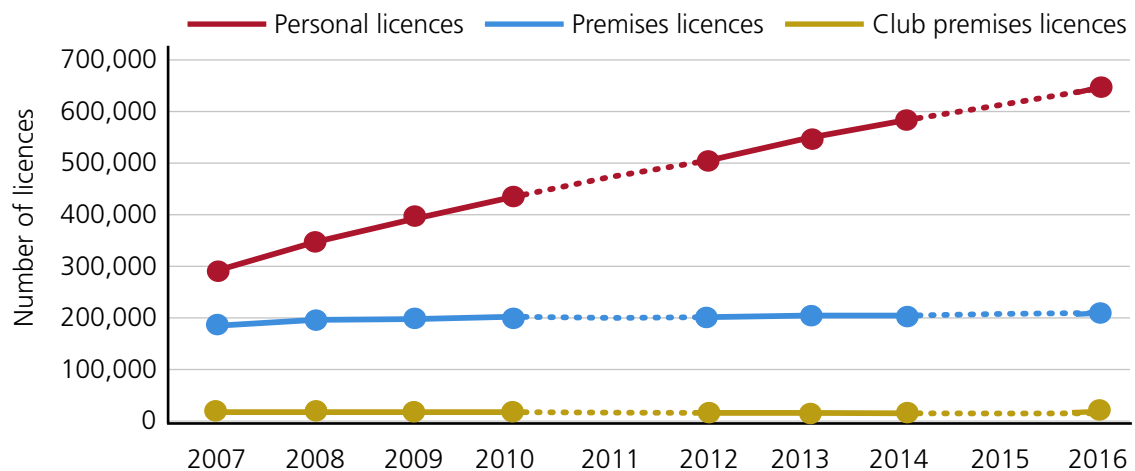
41 Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 ([SI 2009/1724](#))

42 Legislative Reform (Entertainment Licensing) Order 2014 ([SI 2014/3253](#))

43 Section 140 of the Policing and Crime Act 2017 is brought into force on 6 April 2017 by the Policing and Crime Act 2017 (Commencement No. 1 and Transitional Provisions) Regulations 2017 ([SI 2017/399](#))

*Outlets for the sale of alcohol*

57. The figures for numbers of licences can be given with some accuracy since nearly all local authorities respond to Home Office requests for figures, and for the few that do not, the figures can be imputed. The statistics given in the Home Office's Memorandum go up to 2014. No figures were collected for 2015, and the figures for 2016 were published after the Memorandum. The following chart illustrates that there was only a small increase in premises licences between 2007 and 2014, and an equally small decrease in the number of club premises certificates. The apparent doubling in the number of personal licences is mainly, if not entirely, due to the fact that individuals who are authorised to supply alcohol are no longer required to surrender their personal licences when they leave the alcohol industry.

**Figure 1: Number of licences, England and Wales, 2007–2016**

Source: Home Office, 'Alcohol and late night refreshment licensing England and Wales' (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

58. As at 31 March 2016 the position in England and Wales was as shown in Box 1:

**Box 1: Outlets for the sale of alcohol as at 31 March 2016**

There were 210,000 premises licences, an increase of 3% (5,500) compared with March 2014, in line with the broadly increasing trend seen since March 2010 when there were 202,000 premises licences. Of these, 18% were licensed only for on-sales of alcohol, 27% only for off-sales, and 38% for both on-and-off-sales. 16% are not licensed to sell alcohol at all (and so were licensed only for late night refreshment).

There were 86,500 premises licences with night refreshment. Fewer than 20,000 of these were licensed only for late night refreshment (and so not also for the sale of alcohol). Whilst there was no consistent trend between 2010 and 2016, the total figure represented a decrease of 0.1% (100) compared with March 2014 and an increase of 2% (1,600) compared with March 2010. The number of premises licences with late night refreshment made up 41% of the total number of premises licences.



There were 8,300 premises with 24-hour alcohol licences. Since March 2010 there had been an increase of 6% (500); however, the number of premises with 24-hour alcohol licences had remained steady since March 2012, ranging between 8,200 and 8,400. Of these, 43% were for hotel bars, 15% for large supermarkets, 17% for other convenience stores, and 11% for pubs, bars and night clubs.

There were 14,700 club premises certificates, a decrease of 5% (700) compared with March 2014 and continued the decline seen since March 2010 when there were 17,000 certificates.

There were 646,500 personal licences, an 11% increase (63,000) compared with March 2014. This continued the increasing trend seen since March 2010 when the figure was 434,200 licences, and is probably accounted for by the fact that personal licences no longer have to be surrendered.

Source: Home Office, 'Alcohol and late night refreshment licensing England and Wales' (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

59. During the passage of the Licensing Bill one of the much over-used expressions was that it was going to change the UK to a “café culture”, by which was meant the imagined Continental habit of modest and leisurely consumption of alcohol at any civilised hour, preferably in clement weather. The fact that this has not materialised seems to have come as no surprise to any of our witnesses, nor to us; it takes more than an Act of Parliament to change the habits of generations, and this country’s climate was never going to favour such a change. The café culture which has grown up takes a rather different form and is confined to town centres, where between 2011 and 2016 a fall of 2,000 in the number of bars, pubs and night clubs has been accompanied by an increase of 6,000 in the number of cafés, fast food outlets and restaurants.<sup>44</sup> This is not the café culture that was envisaged in 2003.
60. Changes in the proportion of alcohol sold in on- and off-trade premises are particularly significant. In 2000 the volume of beer sold at off-licences was less than half that sold at on-licences. The proportion steadily increased until in 2014 the volume of beer bought at off-licences, the equivalent of 13.78 million barrels, for the first time exceeded the 13.66 million barrels sold in pubs, clubs and restaurants.<sup>45</sup> An increasing proportion of off-trade sales now take place online, but witnesses were unable to provide us with separate figures for this emerging market. In Chapter 7 we look in more detail at these changes, and consider whether the licensing system has sufficiently changed to take account of them.

### *Alcohol consumption*

61. As the Home Office explain in paragraphs 194–200 of their Memorandum,<sup>46</sup> there is a wide range of indicators which describe trends, and the data are

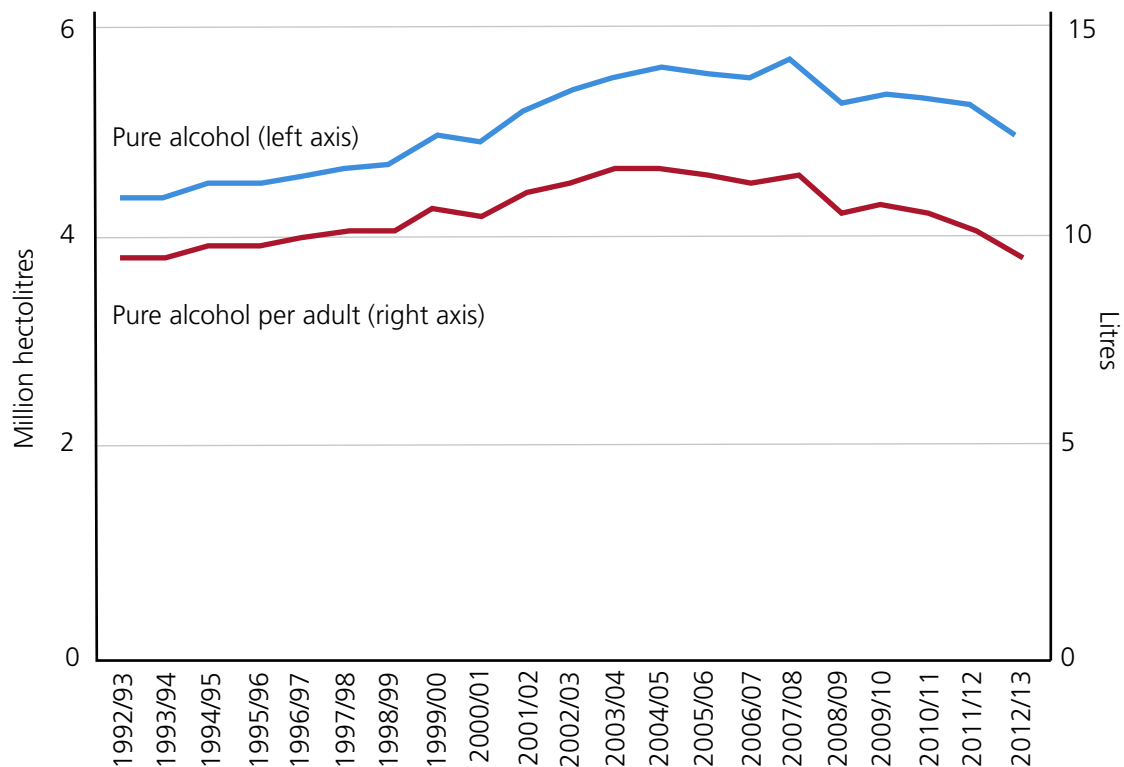
44 ‘Coffee shops on the march as pubs decline, town centre data shows’, *BBC News* (17 January 2017): <http://www.bbc.co.uk/news/uk-england-38609692> [accessed 10 March 2017]

45 ‘Off-trade beer sales volumes exceed on-trade sales for first time on record’, *The Grocer* (30 January 2015): <http://www.thegrocer.co.uk/buying-and-supplying/off-trade-beer-sales-volumes-exceed-on-trade-sales-for-first-time-on-record/512899.article> [accessed 10 March 2017]

46 Home Office, *Memorandum to the House of Lords Select Committee: Post-legislative Scrutiny of the Licensing Act 2003*, Cm 9278, June 2016: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530664/Cm\\_9278\\_-\\_Post-Legislative\\_Scrutiny\\_-\\_Licensing\\_Act\\_2003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530664/Cm_9278_-_Post-Legislative_Scrutiny_-_Licensing_Act_2003.pdf) [accessed 10 March 2017]

collected in different ways and cover different populations. The Home Office referred us to the HMRC data on the volume of alcohol cleared after duty for consumption in the UK. As Figure 2 shows, over the 20 years from 1992/93 to 2012/13 the annual consumption in litres of pure alcohol per adult rose to a peak of 11.73 litres in 2004/05, declining since then to 9.65 litres in 2012/13.

**Figure 2: Total volume and per adult levels of pure alcohol clearances, UK, 1992/93–2012/13**



Source: HM Revenue & Customs, 'Alcohol Factsheet 2012–13' (31 October 2013): <https://www.uktradeinfo.com/Statistics/Pages/TaxAndDutyBulletins.aspx> [accessed 10 March 2017]

HMRC did not collect data on this basis after that date. There may additionally be alcohol consumed on which duty has not been paid, but there is no reason to suppose that this would affect the trend.

62. For estimates since 2012/13, the Home Office have referred us to surveys by Health Survey for England which show that mean units of alcohol consumed by men per week fell from 17.0 in 2012<sup>47</sup> to 14.9 in 2015.<sup>48</sup> For women the figures were 10.2 in 2012 and 8.9 in 2015. We do not dispute that, as Alcohol Concern say, "Survey measures of drinking behaviour are generally acknowledged to underestimate consumption."<sup>49</sup> However the trend is

47 Health and Social Care Information Centre, *Health Survey for England 2012*, Vol 1 (2013) chapter 6, p 28: [http://healthsurvey.hscic.gov.uk/media/1025/chpt-6\\_alcohol.pdf](http://healthsurvey.hscic.gov.uk/media/1025/chpt-6_alcohol.pdf) [accessed 10 March 2017]

48 NHS Digital, 'Health Survey for England 2015: Adult alcohol Excel Tables' (14 December 2016), Table 2: <http://www.content.digital.nhs.uk/catalogue/PUB22610/HSE2015-Adult-alc-tab.xlsx> [accessed 10 March 2017]

49 Alcohol Concern, 'Alcohol statistics' (August 2016): <https://www.alcoholconcern.org.uk/alcohol-statistics> [accessed 10 March 2017]

clear, and we accept the Home Office view that the figures demonstrate a continuing trend of “falling alcohol consumption ... over the past decade.”<sup>50</sup>

63. It is tempting to look for a causal connection in the fact that consumption peaked at around the time the Licensing Act came into force in November 2005, but there is no evidence for this. The Home Office say in their Memorandum: “It is not possible to say with any certainty whether any of the changes in alcohol-related trends took place due to the implementation of the LA2003.”<sup>51</sup>

### Alcohol policy, licensing policy and health

64. No Committee which has heard evidence about the effects of excessive alcohol consumption, as we have over many months, can fail to be concerned. Some of the evidence we have received refers to changes in alcohol-related hospital admissions and alcohol-related deaths. This immediately raises the question of what is meant by ‘alcohol-related’. A narrower measure is obtained where an alcohol-related disease, injury or condition was the primary diagnosis or there was an alcohol-related external cause. On this measure there were 333,000 estimated admissions in England in 2014–15, similar to 2013–14 but 32% higher than 2004–05. A broader measure is obtained where an alcohol-related disease, injury or condition was the primary reason for admission or a secondary diagnosis. On this measure, in 2014–15 there were 1.1 million estimated admissions, 3% more than 2013–14 and nearly double the level in 2004–05.<sup>52</sup>
65. The same problems of definition arise when looking at numbers of alcohol-related deaths. The ONS definition includes only causes regarded as most closely related to alcohol consumption, on which basis in 2014 there were 6,831 alcohol-related deaths in England. This is 1% of all deaths, an increase of 4% since 2013, and 13% higher than in 2004.<sup>53</sup>
66. As always, the absolute number of deaths has to be distinguished from death rates. Figure 3, which relates to the whole UK, shows how the alcohol-related death rate in 2014, at 14.3 per 100,000, was down from a peak of 15.8 in 2008, and in fact lower than in 2004, but still some 50% higher than the figure of 9.1 per 100,000 in 1994, when these records began.

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50 Home Office, *Memorandum to the House of Lords Select Committee: Post-legislative Scrutiny of the Licensing Act 2003*, Cm 9278, June 2016, paragraph 196: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530664/Cm\\_9278\\_-\\_Post-Legislative\\_Scrutiny\\_-\\_Licensing\\_Act\\_2003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530664/Cm_9278_-_Post-Legislative_Scrutiny_-_Licensing_Act_2003.pdf) [accessed 10 March 2017]

51 Home Office, *Memorandum to the House of Lords Select Committee: Post-legislative Scrutiny of the Licensing Act 2003*, Cm 9278, June 2016, paragraph 194: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/530664/Cm\\_9278\\_-\\_Post-Legislative\\_Scrutiny\\_-\\_Licensing\\_Act\\_2003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530664/Cm_9278_-_Post-Legislative_Scrutiny_-_Licensing_Act_2003.pdf) [accessed 10 March 2017]

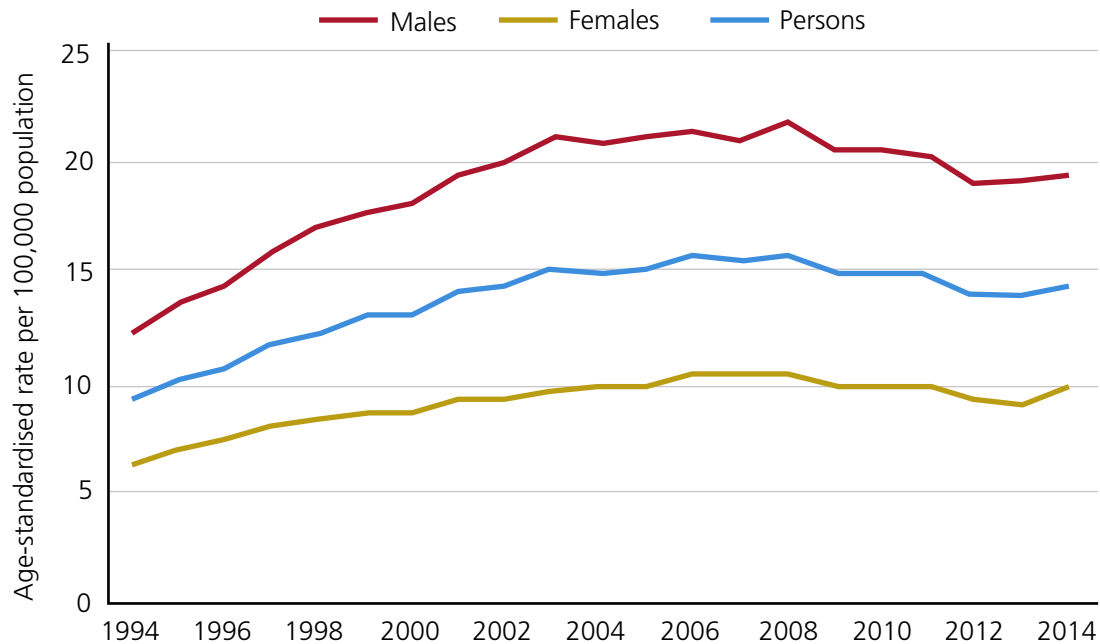
52 Health & Social Care Information Centre (HSCIC), *Statistics on Alcohol, England, 2016* (30 June 2016): <http://content.digital.nhs.uk/catalogue/PUB20999/alc-eng-2016-rep.pdf> [accessed 10 March 2017]

A fuller discussion of measures of alcohol-related hospital admissions can be found at <https://publichealthmatters.blog.gov.uk/2014/01/15/understanding-alcohol-related-hospital-admissions/> [accessed 10 March 2017]

53 Health & Social Care Information Centre (HSCIC), *Statistics on Alcohol, England, 2016* (30 June 2016): <http://content.digital.nhs.uk/catalogue/PUB20999/alc-eng-2016-rep.pdf> [accessed 10 March 2017]



**Figure 3: Age-standardised alcohol-related death rates per 100,000 population, UK, 1994–2014**



Source: Office for National Statistics, 'Alcohol related deaths in the United Kingdom: Registered in 2014' (2 February 2016): <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/alcoholrelateddeathsintheunitedkingdom/registeredin2014> [accessed 22 March 2017]

67. It has to be remembered that some alcohol-related admissions, and even more so alcohol-related deaths, may be the result of consumption levels many years previously, and cannot be used directly as evidence of current consumption levels, or current changes in consumption levels. Nevertheless, these figures are startling. Consistent with our remit, we have considered whether there are any changes which could be made to licensing law which might improve the situation.

#### *Pricing and taxation of alcohol*

68. It is in our view unarguable that an increase in the price of alcohol will decrease consumption. The Government's 2012 Alcohol Strategy stated: "There is strong and consistent evidence that an increase in the price of alcohol reduces the demand for alcohol which in turn can lead to a reduction in harm, including for those who regularly drink heavily and young drinkers under 18."<sup>54</sup>
69. Sarah Newton MP, the Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism at the Home Office, told us: "Since I was elected I have supported measures to tax the strongest and most harmful types of alcohol more highly ... we have brought in other measures such as that alcohol cannot be sold for less than the cost of production plus VAT.<sup>55</sup> They are all measures the Government have taken

54 Home Office, *The Government's Alcohol Strategy*, Cm 8336, March 2012, paragraph 2.4, p 6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224075/alcohol-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224075/alcohol-strategy.pdf) [accessed 10 March 2017]

55 Licensing Act 2003 (Mandatory Conditions) Order 2014 ([SI 2014/1252](https://www.legislation.gov.uk/uksi/2014/1252))

on duties and tax to recognise the harmful effects of certain alcohols taken to excess.”<sup>56</sup>

70. There can be, and is, a great deal of debate about the degree to which a particular increase in cost will be effective in reducing consumption, about how the increase should be targeted to have maximum effect, and about whether it will have any undesirable consequences.
71. The use of taxation or pricing policy to influence alcohol consumption is largely outside our remit. We did however include in our call for evidence the following question: “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?”
72. We included this question because Scotland, the only country in the world (so far as we are aware) which has MUP on its statute book,<sup>57</sup> has introduced it by an amendment to the Licensing (Scotland) Act 2005. We note the view of Alcohol Research UK that: “... it is not clear that a discussion of minimum pricing falls within a consideration of the 2003 Licensing Act. Although the Minimum Pricing (Scotland) Act [sic] proposes introducing MUP through a mandatory licensing condition, pricing policy is distinct from licensing policy.”<sup>58</sup> The British Beer and Pub Association (BBPA) made the same point: “We do not see the relevance regarding pricing and taxation in an evaluation of licensing law. Taxation and pricing are very separate mechanisms to the licensing regime, and should not in our view be conflated.”<sup>59</sup> However we believe that the fact that MUP can be, and has been, introduced as a mandatory licensing condition,<sup>60</sup> means that on balance it falls within our terms of reference.
73. The amendment made to the Licensing (Scotland) Act 2005 would allow the Scottish Government to prohibit the sale of alcohol at less than a specified price per unit; the price they are considering is 50 pence per unit. This provision is however not yet in force. Within a month of the enactment of the Alcohol (Minimum Pricing) (Scotland) Act 2012 the Scotch Whisky Association petitioned for judicial review of the Act on the ground that it was contrary to the prohibition by Article 34 of the Treaty on the Functioning of the European Union (TFEU) on quantitative restrictions on imports and measures having equivalent effect, and not saved by the derogation in Article 36 which provides that these prohibitions do not preclude prohibitions or restrictions justified on grounds of the protection of public health. The case was referred by the Inner House of the Court of Session to the Court of Justice of the European Union (CJEU), which ruled in December 2015 that the policy could be justified on health grounds under EU law only if it was

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56 [Q 224](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

57 Russia, Moldova, Ukraine and Uzbekistan have introduced some form of minimum pricing, and so have some Canadian provinces. However minimum pricing relates to the volume of the drink rather than its alcoholic strength.

58 Written evidence from Alcohol Research UK ([LIC0022](#))

59 Written evidence from British Beer and Pub Association ([LIC0111](#))

60 In relation to England and Wales, it was the Government’s intention to follow the Scottish example and introduce MUP via primary legislation as a new licensing condition of the Licensing Act 2003: see its Impact Assessment, 1 November 2012, p 23: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157763/ia-minimum-unit-pricing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157763/ia-minimum-unit-pricing.pdf) [accessed 10 March 2017]

more proportionate and effective than using general taxation. The CJEU ruled that “the effect of the Scottish legislation is significantly to restrict the market, and this might be avoided by the introduction of a tax measure designed to increase the price of alcohol instead of a measure imposing a minimum price per unit of alcohol.” It was for the national court to decide whether an alternative approach, such as a tax increase, might achieve the same result but be less restrictive.<sup>61</sup>

74. The case was referred back to the Inner House of the Court of Session which ruled on 21 October 2016 that the Scottish Government was within its rights in deciding that MUP would be more effective than taxation in protecting public health.<sup>62</sup> However on 21 December 2016 the Inner House granted the Scotch Whisky Association permission to appeal to the Supreme Court,<sup>63</sup> and this provision has still not been brought into force.
75. We received views which were predictably divided. Dr Jeanelle de Gruchy, the Director of Public Health at Haringey Council, speaking on behalf of the Association of Directors of Public Health, said: “Among the vast array of public health issues and policy responses we deal with, directors of public health felt MUP came out as No. 1 in having sufficient evidence of impact and import.”<sup>64</sup> Professor Sir Ian Gilmore, the Chair of the Alcohol Health Alliance, told us: “Targeting those we really want to help is the key benefit of MUP. The Scottish courts have crawled over that with enormous alacrity and come to the conclusion, with new evidence coming to light since it was first put before them, that the case is now overwhelming. It will be a real benefit to public health.”<sup>65</sup>
76. Rosanna O’Connor, the Director for Alcohol, Drugs and Tobacco of Public Health England (PHE), told us<sup>66</sup> that PHE would be publishing later in the year a report which would include an assessment of the impact of policy interventions on alcohol-related harms. That report, published in December 2106, concludes:

“Implementing a MUP is a highly targeted measure which ensures any resulting price increases are passed on to the consumer improving the health of the heaviest drinkers who experience the greatest amount of harm. MUP would have a negligible impact on moderate drinkers and the price of alcohol sold in pubs, bars and restaurants.”<sup>67</sup>

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61 *Scotch Whisky Association and others v Lord Advocate and Advocate General*, Court of Justice of the European Union, Second Chamber, case C-333/14, judgment of 23 December 2015: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0333> [accessed 10 March 2017]

62 *Scotch Whisky Association and others v Lord Advocate and Advocate General*, First Division, Inner House, Court of Session, [2016] CSIH 77: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=9a1821a7-8980-69d2-b500-ff0000d74aa7> [accessed 22 March 2017]

63 ‘Court of Session allows Scotch Whisky Association appeal to Supreme Court’, *Scottish Legal News* (22 December 2016): <http://www.scottishlegal.com/2016/12/22/court-of-session-allows-scotch-whisky-association-appeal-to-supreme-court/#n> [accessed 14 March 2017]. The appeal is listed to be heard on 24–25 July 2017.

64 Q 110 (Dr Jeanelle de Gruchy, Vice-President, Association of Directors of Public Health)

65 *Ibid.*

66 Q 3 (Rosanna O’Connor, Director, Alcohol, Drugs & Tobacco, Public Health England)

67 Public Health England, *The Public Health Burden of Alcohol and the Effectiveness and Cost-Effectiveness of Alcohol Control Policies: an evidence review* (December 2016) pp. 88–95 and 202–203: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/574427/Alcohol\\_public\\_health\\_burden\\_evidence\\_review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574427/Alcohol_public_health_burden_evidence_review.pdf) [accessed 10 March 2017]

77. While these witnesses felt that MUP was “targeting those we really want to help”, the industry respondents were opposed to the introduction of MUP precisely because they felt it was not in fact properly targeted. The Scotch Whisky Association said:

“We do not believe the Government should introduce minimum unit pricing in England. The previous Government stated it would not proceed with MUP noting that it “has not provided evidence that conclusively demonstrates that MUP will actually do what it is meant to: reduce problem drinking without penalising all those who drink responsibly”. There is no justification for requiring responsible drinkers to pay more, and those in poverty are hardest hit ... Evidence from Scotland shows the majority of hazardous and harmful drinkers are in the top three income quintiles”.<sup>68</sup>

78. The Wine and Spirit Trade Association (WSTA) told us in written evidence that “the Government’s Economic Impact Assessment<sup>69</sup> highlighted that an MUP of 45p would cost the Treasury £200m in lost revenue and also cost consumers an additional £1bn and, at a time of significant uncertainty for business and the Government, this could have a significant impact.” In oral evidence Miles Beale, their Chief Executive,<sup>70</sup> said: “We think that it would be very unfair on the poorest, in particular. We certainly do not see that it would work, given that there is no evidence that it would.”<sup>71</sup> Brigid Simmonds, the Chief Executive of the British Beer and Pub Association, said: “It is a total tax on everybody and if you are not careful it takes money from those who can least afford it when actually they are drinking perfectly sensibly.”<sup>72</sup>
79. A non-industry view to the same effect was given by Chris Snowdon from the Institute of Economic Affairs:

“It is a mistake to think that the very cheapest alcohol will suddenly sell for more; the cheapest alcohol will disappear and it will be the second or third cheapest that will become the cheapest. So effectively, you are forcing people to drink slightly better-quality alcohol for more money. People who would rather buy cheap alcohol and keep the difference would be forced to spend more money for alcohol which is better, and might be more widely advertised, but they would be happier drinking something cheaper because they are very price sensitive. That is a result of the fact that the people most affected by this are people on low incomes.”<sup>73</sup>

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68 Scottish Government, *The Scottish Health Survey, 2014 Edition* (September 2015): <http://www.gov.scot/Resource/0048/00485587.pdf> [accessed 10 March 2017]

69 Home Office, *Impact Assessment: A Minimum Unit Price for Alcohol* (1 November 2012): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157763/ia-minimum-unit-pricing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157763/ia-minimum-unit-pricing.pdf) [accessed 10 March 2017]

70 Mr Beale gave evidence to the same effect to the Home Affairs Sub-Committee of the House’s European Union Committee for its inquiry into the EU Alcohol Strategy: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/eu-alcohol-strategy/Alcohol-Strategy-Evidence-Volume-Final.pdf> [accessed 22 March 2017]

71 [Q 66](#) (Miles Beale, Chief Executive, Wine Spirit and Trade Association)

72 [Q 99](#) (Brigid Simmonds, Chief Executive, British Beer and Pub Association)

73 [Q 50](#) (Chris Snowdon, Institute of Economic Affairs)

80. These witnesses regard MUP as a regressive form of price control, hitting those on lower incomes and sensible drinkers hardest while diverting the money raised into the hands of industry.
81. In relation to England and Wales, in the 2012 Alcohol Strategy the Government said unequivocally: “We will introduce a minimum unit price (MUP) for alcohol meaning that, for the first time ever in England and Wales, alcohol will not be allowed to be sold below a certain defined price.” This was specifically endorsed by David Cameron as Prime Minister in his Foreword: “So we are going to introduce a new minimum unit price.”<sup>74</sup> That is not what happened. In July 2013 the Government published its *Next Steps* paper<sup>75</sup> and the then Home Secretary wrote: “[The consultation] has not provided evidence that conclusively demonstrates that Minimum Unit Pricing (MUP) will actually do what it is meant to: reduce problem drinking without penalising all those who drink responsibly. In the absence of that empirical evidence, we have decided that it would be a mistake to implement MUP at this stage. We are not rejecting MUP—merely delaying it until we have conclusive evidence that it will be effective.”
82. In oral evidence, Sarah Newton MP would go no further than to say:
- “We do not want to go ahead with a policy that we would not be able to implement because of rulings in the courts. We are waiting to see what happens. I expect it will go to the Supreme Court,<sup>76</sup> which will make a ruling as to whether the Scottish Government were right and were able to introduce MUP. We will wait to see what results from that. We keep the whole alcohol pricing area under review.”<sup>77</sup>
83. The minimum pricing provisions introduced by the Alcohol (Minimum Pricing) (Scotland) Act 2012 expire after 6 years, unless previously renewed.<sup>78</sup> The first assessment as to whether MUP is effective will not come until the Scottish provision has been in force for five years.<sup>79</sup> Such an assessment cannot therefore come before 2023 at the earliest.<sup>80</sup> Evidence after such a short time, if it is significant at all, is more likely to be persuasive than conclusive; and however persuasive it may be, it will not be accepted as such by the industry. As the Court of Session said, “The only way in which minimum pricing can be tested is by trialing it; which is what the [Scottish] Government seek to do.”<sup>81</sup>

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74 Home Office, *The Government’s Alcohol Strategy*, Cm 8336, March 2012, paragraph 2.8 and Foreword: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224075/alcohol-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224075/alcohol-strategy.pdf) [accessed 10 March 2017]

75 Home Office, *Next Steps following the consultation on delivering the Government’s Alcohol Strategy* (July 2013) Introduction by Rt Hon Theresa May MP, paragraph 5, and paragraphs 1.3–1.5: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223773/Alcohol\\_consultation\\_response\\_report\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223773/Alcohol_consultation_response_report_v3.pdf) [accessed 10 March 2017]

76 Ms Newton gave evidence on 13 December 2016. On 21 December 2016 the Inner House granted the Scotch Whisky Association permission to appeal to the Supreme Court.

77 **Q 224** (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

78 Alcohol (Minimum Pricing) (Scotland) Act 2012, [section 2\(1\)](#)

79 Alcohol (Minimum Pricing) (Scotland) Act 2012, [section 3](#)

80 This of course assumes that the Supreme Court will hold that the introduction of MUP would be legal.

81 *Scotch Whisky Association and others v Lord Advocate and Advocate General, First Division, Inner House, Court of Session*, Judgment of 21 October 2016, paragraph 202: [2016] CSIH 77: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=9a1821a7-8980-69d2-b500-ff0000d74aa7> [accessed 22 March 2017]



84. The argument that a policy should not be introduced because there was no conclusive evidence that it would be effective was once deployed to oppose compulsory seat belts and restrictions on smoking. It does not make sense for a decision for England and Wales to be postponed indefinitely. UK Ministers must be guided by the Scottish experience.
85. We recognise that MUP cannot be brought into force in Scotland, or any part of the UK, 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, either in Scotland or in England and Wales, 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 rather than (as in Scotland) as a mandatory licensing condition.
86. *Assuming that minimum unit pricing is brought into force in Scotland, we recommend that once Scottish ministers have published their statutory assessment of the working of MUP, if that assessment demonstrates that the policy is successful, MUP should be introduced in England and Wales.*
87. *We urge the Government to continue to look at other ways in which taxation and pricing can be used to control excessive consumption.*

*The place of licensing in local strategy*

88. The original purpose of licensing the sale of alcohol, and still one of its main purposes, was to attempt to control the crime and disorder which seem inevitably to accompany the uncontrolled sale of alcohol. While the Vagabonds and Beggars Act 1494, from which we have already quoted,<sup>82</sup> allowed justices to prevent the sale of alcohol, the Ale Houses Act 1551 provided that no one was permitted to keep an ale house unless allowed to by Justices sitting in Sessions, who were empowered to take sureties—the equivalent of today's licence fee. The reason given for this provision was that “intolerable hurte and trobles to the Common Wealthe of this Realme dothe daylie growe and increase through suche abuses and disorders as are had and used in comen Alehouses”.
89. The Licensing Act has to perform a delicate exercise, balancing the enjoyment of the great majority of moderate responsible drinkers with the rights of local residents and the expectations of the wider public. The holders of personal licences and the managers of licensed premises (who will often be the same person) have every interest in ensuring that their business is conducted in accordance with the law; their livelihood depends on it. Their livelihood also depends on maximising sales to their clients, but not at the expense of allowing behaviour which will become criminal conduct or will spill into the streets as public nuisance, to the annoyance of local residents and the possible imperilment of their licence. Many pubs and other retailers have signed up to the voluntary Public Health Responsibility Deal,<sup>83</sup> though there are doubts about its effectiveness which we cover in more detail in Chapter 7.
90. At national level, licensing still has a part to play in the reduction of alcohol-fuelled crime, in the protection of children and in its influence on public

82 Paragraph 1

83 Department of Health, ‘Alcohol Network’: <https://responsibilitydeal.dh.gov.uk/category/alcohol-network/> [accessed 10 March 2017]

health, but at local level its importance lies in balancing the enjoyment of alcohol for social purposes with the protection of the community from the crime, disorder and public nuisance caused by excessive drinking. The main distinction is that now the purchase and consumption of alcohol is no longer exclusively in “comen Alehouses”, but increasingly off the premises.

91. The Government stated in its Memorandum that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.”<sup>84</sup> In oral evidence Anna Paige, the Head of Drugs and Alcohol Unit/Drugs and Firearms Licensing Unit at the Home Office, explained what was meant by this: “We see local authorities, licensing authorities, directors of public health ... police and crime commissioners and environmental health working effectively at a local level to make decisions about licensing ... The point that we were aiming to make with the memorandum is that the fundamental aspects of the Licensing Act are about local decision-making, and they allow local authorities to make decisions in the context of their local strategy for a community, for business development, for diversification of the night-time economy, in a way that imposing a strict national framework would not necessarily support.”<sup>85</sup>
92. In our call for evidence we quoted the Government’s statement that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy,” and asked witnesses if they agreed. Some did agree, though mostly without giving reasons. A number welcomed the interaction between the Act and the Modern Crime Prevention Strategy.<sup>86</sup> Balance North East,<sup>87</sup> with whom a number of other witnesses from the North East agreed,<sup>88</sup> said: “At a local level the Act can be used in an effective strategic way, using Statements of Licensing Policy (SLP) to set out a clear and positive view as to what the public good in relation to licensing requires in an area. Some are also well coordinated with other local strategies, such as the planning strategy, the corporate strategy, or the health and wellbeing strategy.”
93. By no means all agreed with the Government’s assessment. Equity complained that for some time their members had reported a “wide variation in the current application of regulation by different authorities, which leads to higher costs and a great deal of uncertainty for event and entertainment organisers and performers. One example is the rise in the number of local authorities introducing street entertainment policies which are punitive to buskers and other entertainers.”<sup>89</sup>
94. Almost all our witnesses who considered the issue agreed that one area where there is not a coherent local strategy is in the interaction between licensing and planning. We consider this in Chapter 5.

### **An overall impression**

95. With many of our witnesses, we began by asking what their overall impression was of the Act and the way it had worked over the first 11 years of its life. Most

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84 Paragraph 123

85 Q 8 (Anna Paige, Head of Drugs and Alcohol Unit/Drugs and Firearms Licensing Unit, Home Office)

86 For example, written evidence from Alcohol Concern ([LIC0085](#)), Durham Constabulary ([LIC0045](#)), Healthier Futures ([LIC0097](#))

87 Written evidence from Balance North East Alcohol Office ([LIC0023](#))

88 For example, written evidence from Durham Constabulary ([LIC0045](#))

89 Written evidence from Equity ([LIC0071](#))

witnesses from a variety of backgrounds thought the Act was working well, though all had suggestions to make for its improvement, many of which we consider in the following chapters. Some witnesses, residents in particular, were less enthusiastic. We give in Box 2 some of the views of the Act.

### **Box 2: Overall assessments of the Act**

#### **Practitioners**

“Generally, the Act has been a success. Residents have more say, and it is a simpler system.”<sup>90</sup>

“As licensing practitioners, we are here to make it work. We have clients to represent. It has had its challenges, certainly in the early days, but my overall impression is that the system works.”<sup>91</sup>

“Generally, I think it has worked well. As a solicitor, I focus quite a lot on the procedure behind the applications. The Act has allowed a lot more engagement and has made it easier for both the trade and local residents to engage in the process.”<sup>92</sup>

“The Licensing Act 2003 has failed where the previous legislation succeeded—in stemming the proliferation of licensed premises. The demand test has been removed. The demand test was a very good filter that made sure that there was not an excess of supply over demand. The current regime requires a grant, if no one has objected, and even where there are objections limits the reasons for refusal to something arising under the licensing objectives. Overall, I think that has been bad.”<sup>93</sup>

#### **Residents**

“We see the Licensing Act as having dealt a raw deal to residents when it comes to making decisions on where and what premises should be licensed. There is a general impression from our members that there is a presumption of approval by licensing committees in granting the applications as they stand.”<sup>94</sup>

#### **Police**

“We are broadly supportive of the intent of the Licensing Act ... but there are areas where I think the Act can be strengthened to support communities. The three broad areas I would focus on are consistency, training or development of those involved in this through their knowledge and approach, and partnership working.”<sup>95</sup>

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90 [Q 113](#) (Andrew Grimsey, Solicitor, Poppleston Allen)

91 [Q 113](#) (John Gaunt, Partner, John Gaunt and Partners)

92 [Q 144](#) (Andrew Cochrane, Senior Partner and Head of Licensing, Flint Bishop Solicitors)

93 [Q 144](#) (Gerald Gouriet QC)

94 [Q 70](#) (Dr Alan Shrank, Chairman, National Organisation of Residents’ Associations)

95 [Q 133](#) (Chief Superintendent Gavin Thomas, Police Superintendents Association of England and Wales)



**The industry**

“We [Sainsbury’s] regard the Act as broadly effective. If we think back to the regime that existed before, there was certainly a greater degree of inconsistency among licensing justices. Although there is still inconsistency in application, we none the less think the Act has been effective.”<sup>96</sup>

“From the Act’s introduction, its stated aims—one of the main ones is to protect children from harm—have been relatively successful. We have seen every statistic on children accessing alcohol go down significantly.”<sup>97</sup>

**Clubs**

“Generally it has worked very well ... .. The only problem that the union has with different authorities is inconsistency. Different authorities interpret the law in different ways.”<sup>98</sup>

“We have adapted to it now. It works very well for the London clubs.”<sup>99</sup>

“In general, it seems to work very well. It is certainly an improvement on the old system.”<sup>100</sup>

96. One theme running through much of the evidence was criticism of the inconsistency of the approaches by local authorities, by licensing committees and, on appeal, by magistrates’ courts. This was eloquently put by Kate Nicholls, the Chief Executive of the Association of Licensed Multiple Retailers:

“If I try to sum up our members’ experience of the Licensing Act over the past decade in one word, that would be variability. Where it works well, it works really well, but there is no consistent good practice across the country. There is variation in the way in which policy is envisaged at a national level and how it is applied at a local level. There is variation between local authorities in their understanding and interpretation of the national legislation and there is variability between enforcement authorities in a specific local licensing area. Licensing reform is always envisaged as being driven by localism, quite rightly. What we have now over the course of a decade where we have had about 60 changes to the Licensing Act is a very individualised interpretation and application of the law. That is down to the lack of a robust clear national framework. That leads to very inconsistent decision-making. It is not good for business. It is not good for local residents ... and crucially it means that that very careful balancing act of competing interests that the Licensing Act 2003 was based on has been lost.”<sup>101</sup>

In a system which relies on local decision-making about local issues, some degree of variability is inevitable, but plainly the current degree of inconsistency is unacceptable. We consider in the following two chapters how matters might be improved.

96 [Q 155](#) (Nick Grant, Head of Legal Services, Sainsbury’s Supermarkets Ltd)

97 [Q 155](#) (James Brodhurst-Brown, Manager, Regulatory Affairs and Trading Law, Waitrose)

98 [Q 166](#) (George Dawson, Union President, Working Men’s Club and Institute Union)

99 [Q 166](#) (Paul Varney, Association of London Clubs)

100 [Q 166](#) (Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors)

101 [Q 90](#) (Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers)

## CHAPTER 3: THE LICENSING PROCESS

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### Introduction

97. We gave earlier<sup>102</sup> full figures showing the numbers of licences in force at 31 March 2016, and the changes from earlier years. Each of the 210,000 premises licences and the 646,500 personal licences had at some stage been the subject of an application to a licensing authority. Many would have been the subject of a hearing by a licensing sub-committee, as indeed would others which were not granted.
98. “The licensing function of a licensing authority is an administrative function. ... The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires.”<sup>103</sup>
99. Licensing hearings may not be judicial proceedings, but to the participants their consequences are no less important. An application refused, or granted but hedged about with excessive conditions, or a licence revoked, can all be fatal to the livelihood of the applicant and maybe of his or her staff. An application granted can have potentially disastrous consequences for local residents and the wider community. It is therefore essential that licensing committees should apply the law correctly and exercise their discretion fairly, reaching conclusions which are just and sensible through a procedure which is, and is seen to be, impartial and transparent. This issue is central to the working of the Act, and central to our inquiry.

### Are licensing committees working?

100. Gerald Gouriet QC, a very experienced licensing practitioner, had this to say:
- “Whether a case is won or lost, whether I appear for a licensee or for a responsible authority, and especially when I am acting for local communities, I and those around me frequently leave licensing hearings with the sense that whilst they may have produced the right result, or something approaching it, that is perhaps by chance rather than because of the quality of the licensing regime and how it is implemented. Too many, on all sides, tell me they leave hearings with a bad taste in their mouths, and the sense that the result was something of a lottery.”<sup>104</sup>
101. In his supplementary written evidence Professor Roy Light, another equally experienced practitioner, said:
- “The quality of hearings is hugely variable. For the most part hearings are fair and impartial but on too many occasions standards fall far short ... A lack of formality with councillors entering too much into the forum is sometimes apparent as well as particular views being expressed based on other than the evidence before the committee.”<sup>105</sup>

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102 Box 1, paragraph 58

103 Per Toulson LJ in *R (on the application of Hope and Glory Public House Ltd) v City of Westminster Magistrates’ Court* [2011] [EWCA Civ 31](#) [accessed 10 March 2017]

104 Written evidence from Gerald Gouriet QC ([LIC0056](#))

105 Supplementary written evidence from Professor Roy Light ([LIC0168](#))

102. The variability of the quality was also a major issue for Mr Gouriet:

“The calibre of licensing panels varies from authority to authority, from the admirable to the indifferent and poor. Sometimes the poor quality is because of the inexperience of newly elected councillors; at other times (not by any means infrequent) panels may comprise councillors who, regrettably, no amount of experience or training is likely to improve, or improve sufficiently. There is no pattern to poor decision-making: applications are granted that should not have been, and refused when they should have been granted. No one category (of those whose interests should be balanced) is in my experience more prejudiced by poor-quality licensing than any other category.”<sup>106</sup>

103. Mr Gouriet gave us two specific examples of conduct which concerned him, and which concern us. The first was: “I had a refusal after which a committee member came up to me and said, ‘Do not worry. You will get it on appeal, but we could not go against the residents’.”<sup>107</sup> In the second: “I was involved in a case where the only representation against was from the chairman’s wife. He would not stand down, and indulged in what I would call a pantomime of asking his wife questions as though she were at arm’s length. That should not happen.”<sup>108</sup>

104. These are scandalous misuses of the powers of elected local councillors, and they are not the only ones we were told of. The Derbyshire Police wrote: “... it has become too political with councils being frightened of making a tough decision for fear of an appeal against them by big brewing companies etc. On two occasions I have had councillors state they have agreed with the police, however, sided with the pub company for fear of an appeal.”<sup>109</sup>

105. Professor Light gave us these examples:

“Some licensing committees I have been to almost bore the marks of a pantomime; they have been so ludicrous, for example a councillor putting her fingers in her ears and saying, ‘La-de-dah-de-dah. I am not listening to you’, when I was trying to put a legal argument. Two weeks ago a councillor said to me, ‘Do not give us any case law, Mr Light. That is not for you to do; our legal adviser gives us case law. Take it back; we are not having it’. The legal adviser said, ‘Well, it is for Mr Light to give you case law, and please take it’.”<sup>110</sup>

106. Mr Gouriet and Professor Light are not alone. Gill Sherratt, a licensing consultant for off-licence chains, thought that she usually got “a fair and balanced decision”, but added:

“I often have to work very hard for it, mainly for training reasons, I suggest. Training of committee members is a big issue. I spoke to a councillor who told me that, in total, she had had three hours training on licensing and then she was sitting on a committee. I can tell you the different experiences that you get. I go into a hearing as a professional and someone who is used to dealing with them, I get a decision and—this actually happened—the next hearing on had pretty much the same

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106 Written evidence from Gerald Gouriet QC ([LIC0056](#))

107 [Q 145](#) (Gerald Gouriet QC)

108 [Q 150](#) (Gerald Gouriet QC)

109 Written evidence from Derbyshire Police ([LIC0028](#))

110 [Q 114](#) (Prof Roy Light, Barrister, St John’s Chambers)

circumstances. He was unrepresented and had not as bad a case as mine; I got conditions applied, he had his licence revoked. That does not seem very fair ... ”<sup>111</sup>

107. Paul Douglas, another licensing consultant, told us: “I feel that of late, however, the whole licensing system has been hijacked, to a point, certainly by a lot of local councillors with whom I deal. They make objections when nobody else—neither the police nor the responsible authorities—is making any, but on the basis of looking after their constituents, they lodge objections to curry favour with their voters”.<sup>112</sup>
108. We began this inquiry knowing that there would be variation among the members of licensing committees in terms of knowledge, expertise and experience; but we did not expect to be given, unasked, examples from some highly reputable sources of what can only be called gross misconduct. We were relieved to hear from Andrew Cochrane, the senior partner of Flint Bishop, solicitors from Derby: “We have 350 licensing authorities in the country. They probably have between 10 and 15 members who can sit on them. It is inevitable that, in a pool of many thousands of potential committee members, you will get a few of the nature that Mr Gouriet describes. My experience is that they are few and far between. It is usually resolved by a stern nudge from the chair or the clerk as to their behaviour.”<sup>113</sup>

#### *The role of the legal adviser*

109. John Gaunt, a partner in John Gaunt and Partners, had this to say: “The role of the legal adviser is critical. In some cases, the legal adviser proactively advises the licensing committee, which is helpful because it keeps them on a relative straight and narrow. In other experiences, the licensing adviser is entirely meek and mild and is there almost as a token.”<sup>114</sup>
110. Paul Douglas also had criticisms of legal advisers: “What I find is that the solicitors advising the committee almost become a fourth member of the committee. They ask so many questions that it gets to the stage where you almost want to say, ‘Excuse me, but it is nothing to do with you. It is down to the committee members’”.<sup>115</sup> Dr Alan Shrank, the Chairman of the National Organisation of Residents’ Associations (NORA), gave us this example: “The committee agreed with us that there could well be troubles and, therefore, they would refuse it. The legal adviser leaned over to the chairman and said, ‘Please don’t confirm that now. Let’s have a break and then we’ll come back’. So they had a break, they came back and they made the decision to approve it.”<sup>116</sup>

#### *The role of the responsible authorities*

111. Section 13(4) of the Licensing Act contains a long list of “responsible authorities” who are authorised to make representations to licensing committees. In our Call for Evidence we asked: “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

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111 [Q 69](#) (Gill Sherratt, Director, Licensing Matters)

112 [Q 144](#) (Paul Douglas, Managing Director, Douglas Licensing (NW))

113 [Q 150](#) (Gerald Gouriet QC)

114 [Q 114](#) (John Gaunt, Partner, John Gaunt and Partners)

115 [Q 150](#) (Paul Douglas, Managing Director, Douglas Licensing (NW))

116 [Q 71](#) (Dr Alan Shrank, Chairman, National Organisation of Residents’ Associations)

could be done?” Councillor Richards told us that “the experience in Stratford District Council is that the police and environmental health frequently respond to our requests for information but other responsible authorities either do not respond at all or respond late.”<sup>117</sup> From the many other replies we received on this issue, it is clear that this is the general experience.<sup>118</sup> Daniel Davies for the Institute of Licensing made the same point, but added: “other [responsible authorities] rarely engage and when they do, representations made are either not relevant to the licensing objectives or are so generalised that they cannot be positively linked to the premises in question.”<sup>119</sup>

112. It is clear from this that most responsible authorities do not engage effectively or at all, but the view of Westminster City Council was that “the lack of responses from some responsible authorities should not be seen as a failure of the Act, or indeed that changes are required to promote authorities to make more representations to applications. The nature of the types of responsible authorities under the Act means that some will be able to make general views and comments based on the main concerns for the operation of the premises, such as the Police and Environmental Health Departments.” We think it likely that this is true in many cases, but there may well also be cases where the views of other responsible authorities would have been helpful, and only a lack of training or resources prevented them. We explain below<sup>120</sup> how the planning system handles this differently.

### *Transparency*

113. Transparency was another concern of Mr Gouriet’s:

“I am concerned at the growing extent to which decisions are influenced (if not effectively taken) by the result of discussions taking place behind closed doors, at which not all interested persons are present ... there should be much greater transparency regarding these behind-closed-doors meetings. In particular, it is essential that reasons are given (by the relevant responsible authorities) for not making representations if there is an otherwise contested application ... pre-hearing consultation can sail too close to the equivalent of a hearing.”<sup>121</sup>

### *The views of local authorities*

114. The Local Government Association and the members of licensing committees who gave evidence to us did not share any of these concerns. Councillor Peter Richards told us:

“I chair our licensing committee at Stratford-on-Avon Council, and I do believe that the members understand very clearly that it is our responsibility to make a balanced decision. We have members from all parties sitting on these panels, and at no stage have I ever experienced any political influences. It is made very clear by our solicitors and in our briefing documents what we are looking to achieve and aiming at and the reasons why a particular licence may be in front of us, and a decision

117 [Q 28](#) (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council)

118 See for example, written evidence from Westminster City Council ([LIC0090](#)) and [Q 73](#) (Richard Brown, Licensing Solicitor, Westminster Citizens Advice)

119 [Q 61](#) (Daniel Davies, National Chairman, Institute of Licensing)

120 Paragraph 131

121 Supplementary written evidence from Gerald Gouriet QC ([LIC00165](#))



is made based on the legal framework by which we are bound, so I think we make very good decisions.”<sup>122</sup>

115. The sub-committee we visited in Southwark seemed to us to be taking their responsibilities seriously with the aim of reaching the right decisions.<sup>123</sup> Yet even here we noted a number of matters which, although they probably did not affect the outcome, seemed to us to fall short of the ideal. For example:

- The business owner stated that he was withdrawing all applications for live and recorded music, inside and outside the premises, with a view to meeting the responsible authority’s representations. Part of the sub-committee’s final decision appears to support this, yet the decision also states that “recorded music (indoors)”, as a ‘Licensable Activity’ has been permitted between [specific hours]”.
- There was confusion concerning the exact nature of a temporary event notice (TEN). The business owners, the councillors and even their legal adviser repeatedly referred, orally and in writing, to the process as an application, when in fact individuals are only required to make a notification. This is a common error to which we revert in Chapter 8.
- The agenda for the hearing of a licence application noted that “there have been no temporary event notices (TENs) submitted for this address within the last 12 months”. However the applicant contradicted this in oral testimony, noting that he had filed the maximum possible number of TENs permitted for single premises (15) in a single year, and he relied on this as evidence that his premises operated without giving rise to complaint. The reason for this discrepancy may be the common failure of councils to keep records of TENs which are uncontested—another matter we consider in Chapter 8.

### *Our conclusion*

116. **We appreciate that we are perhaps more likely to receive evidence critical of the way the licensing process operates than evidence saying it operates well or better. We believe—we certainly hope—that most members of licensing committees take their responsibilities seriously, adopt a procedure which is fair and seen to be fair, are well advised, and reach sensible conclusions. But clearly reform of the system is essential.**

### **Integration of licensing and planning**

117. As our inquiry progressed, at the same time that we were receiving this evidence of problems within the licensing system, we were hearing of the difficulties caused by the separation between licensing and planning. It became clear to us that the two problems are closely related.

118. In our call for evidence we asked: “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?” An overwhelming majority of respondents criticised the current lack of coordination between licensing and planning, and thought that there should be better integration. We were

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122 **Q 27** (Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion, Local Government Association)

123 See Appendix 4 for a report of this visit.

given numerous examples of the absurdities caused by the separation of the systems, especially for applicants for new premises which need permission for both planning and licensing, and for whom permission for one without the other is of no use.

119. This example given to us by the London Borough of Hounslow is just one illustration:

“One recent problem is a restaurant who built a structure in their garden without planning permission. Planning permission was subsequently applied for and refused. There was fierce opposition to the structure from local residents and in our view the concerns of the residents were valid. The owners have also applied for a premises licence which includes the structure. Planning could not object because the regimes are supposed to be separate and the licence was subsequently granted with restrictions. We now have a situation where the planning permission is refused and the licence is granted. Residents have commented on their confusion and the premises licence holder has received an approval and a refusal for the same structure from the same local authority.”<sup>124</sup>

Their conclusion was: “The whole process is confusing for our residents and we would support a change in the position so that planning permission can be considered when determining licence applications.”<sup>125</sup>

120. It is sometimes said by proponents of separate regimes for planning and licensing that the distinction arises because licensing concerns the regulation of licensable activities, whereas planning concerns the impacts of land uses. In reality, this is an artificial distinction. Planning does indeed concern land uses, and licensed premises are one particular example of a use of land, in much the same way that waste recycling, retail, residential, educational establishments, and many more examples are uses of land. They all give rise to their own types of impacts, which are catered for within the planning regime. Drinking Establishments (A4) and Hot Food Takeaways (A5) are already featured in the Use Classes Order<sup>126</sup> as identified planning uses. There is no reason to believe, therefore, that use of land for licensed premises could not properly be catered for entirely within the planning system.
121. We can see no logical reason why, when the decision was taken to transfer the licensing function from licensing justices to local authorities, it should have been thought necessary for local authorities to constitute new committees to handle permission for premises to be used for the sale of alcohol, unlike permission for premises to be used for other purposes which were already dealt with by planning committees. Yet no thought seems to have been given to this. The White Paper issued in 2000 argued at some length that the new licensing authority should be the local authority, but then continued: “We believe a small licensing committee would be more effective and efficient than one involving large numbers.”<sup>127</sup> There seems to have been no consideration of whether a local authority might carry out its new licensing function within its existing structure, without setting up a new committee, whether small or large.

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124 Written evidence from London Borough of Hounslow ([LIC0025](#))

125 *Ibid.*

126 Town and Country Planning (Use Classes) Order 1987 (as amended) ([SI 1987/764](#))

127 Home Office, *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*, Cm 4696, April 2000, paragraphs 117–125

122. One consequence has been that two systems have grown up which go their separate ways and, indeed, are encouraged to do so, with the section 182 Guidance requiring that the two systems should be kept watertight and separate at all times. Paragraph 13.57 of the Guidance reads: “The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.”<sup>128</sup> We believe that this policy, far from avoiding duplication and inefficiency, has increased it, and has led to confusion and absurdity.
123. The Local Government Association published in January 2014 a report entitled *Open for Business: Rewiring Licensing*, in which they argued that “Businesses should be able to apply to councils for a single licence tailored to their business needs.”<sup>129</sup> The conclusion of the Greater Manchester Combined Authority was: “There is a clear opportunity to develop a “single application process” for businesses, whereby they could submit a single application which could cover all permissions required to run a business—planning, licensing, food registration, waste contract etc.—to cut down on bureaucracy and simplify processes.”<sup>130</sup> We would go further. We believe there is a case for considering whether a single committee process might not, at the same time as helping integrate licensing and planning policy, deal with the inadequacies of the licensing committees.

### Licensing and planning committee structures compared

124. A comparison of the systems for dealing with licensing and planning applications is instructive. Licensing applications are made to a licensing authority which is in practice either the council of a district in England, the council of a county in England in which there are no district councils, the council of a county or county borough in Wales, or the council of a London borough. The authority delegates applications to its licensing committee, which consists of at least 10 but no more than 15 councillors, and is assisted by licensing officers. The licensing officers deal with the majority of applications, but where a hearing is needed, this takes place before a sub-committee of the licensing committee.
125. Planning applications are made to the Local Planning Authority (LPA) which equates to the same body as the licensing authority—usually the borough or district council. As with licensing, the more serious or controversial applications will usually go in front of a planning committee.
126. Licensing authorities have their individual Statements of Licensing Policy in respect of each five-year period, made after extensive local consultation. For planning, local authorities are required to have in place a Local Plan. This is much more complex. The Local Plan encompasses the strategic overview, with detail of the local authority’s vision for its area. It maps out where different types of development are intended to be located, and the guidance policies for what will be acceptable and what will not, in design

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128 Case law to date supports this interpretation: *R (KVP Ent Ltd) v South Bucks DC*, paragraphs 54–60, *R (on the application of Blackwood) v Birmingham Magistrates Court*, paragraphs 53–62.

129 LGA, *Open for business: rewiring licensing* (4 February 2014): available at [http://www.local.gov.uk/publications/-/journal\\_content/56/10180/5884676/PUBLICATION](http://www.local.gov.uk/publications/-/journal_content/56/10180/5884676/PUBLICATION) [accessed 10 March 2017]

130 Written evidence from Greater Manchester Combined Authority ([LIC0103](#))



and impact terms. The Local Plan may have different component parts, and there may be other planning documents or policies which support it. Together, the entire collection of planning policies for the area is known as the Development Plan.

127. The Development Plan has statutory status, and is given primacy. In the same way that a licensing application is measured against the four statutory licensing objectives, a planning application is measured against the Development Plan; if the application accords with the Plan it is granted, and if it conflicts with the Plan it is refused, unless “material considerations” indicate otherwise. In such cases the planning committee then have to conduct a balancing exercise. Planning decision-makers cannot realistically be challenged upon their planning judgments but, like licensing committees, can be challenged for a failure to provide cogent reasons for their decisions, or a failure to interpret policy correctly, or a failure to comply with the law, and other similar considerations.
128. It would be entirely feasible to incorporate a Statement of Licensing Policy in the form of a separate element of a Local Plan, focussing specifically upon licensing of premises as a land use.
129. Planning officers process applications and have delegated powers to make decisions about some of them, and to compile draft reports before a committee meeting. For this they need a degree or a postgraduate qualification accredited by the Royal Town Planning Institute in a relevant subject. Whilst there is no doubt that licensing officers are specialised in their field, there is no equivalent qualification in licensing.<sup>131</sup> We believe licensing officers might welcome the opportunity to obtain a qualification which would allow them to play a larger part in the licensing process.
130. The support offered by officers to planning committees greatly surpasses that which is available to licensing committees. Planning officers will spend significant time collating and analysing consultation responses to a planning application, and will apply their professional judgment to those responses to reach a planning balance overall, which is in compliance with law and guidance. The report which they produce to a committee will set out detailed analysis of that material, and will conclude with a specific reasoned recommendation, supported by any suggested conditions that are deemed appropriate. By contrast, it is considered inappropriate for a licensing officer preparing a report for a licensing committee to do anything other than set out the bare facts of the application, record the representations that have been submitted, and give a recital of any relevant law and policy, to a greater or lesser extent, depending upon the authority in question. Consistency is, again, lacking in this area.
131. Another distinction between the licensing and planning systems is the way in which the views of other bodies are collected and incorporated. In licensing it is the applicant who must notify the responsible authorities and, as we have explained,<sup>132</sup> the result is usually that only the police and environmental health are involved. In planning, the case officer has the responsibility of contacting the statutory consultees and asking for their input and, if their input seems to be important, chasing them if they have not responded.

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131 Warwick University once offered a Certificate of Higher Education in Licensing law, but no longer.

132 Paragraphs 111–112

132. Leenamari Aantaa-Collier,<sup>133</sup> with a planning background, told us: “The difference is that in a planning situation the planning officer takes consultation responses, basically. He gathers them together and makes a recommendation to the committee as to how the matter should be decided in his professional opinion, whereas a licensing committee deals with the matter afresh.”<sup>134</sup>

### **Integration: the views of witnesses**

133. The better integration of licensing and planning policy was a question put to all of our witnesses in the call for evidence, and specifically put to many of those who gave us oral evidence. But it was only towards the end of our inquiry that we first put to witnesses the more radical suggestion that licensing committees should be combined with planning committees. On 29 November 2016 we assembled a panel of witnesses specifically to discuss the similarities and differences between the licensing and planning regimes.

134. Leenamari Aantaa-Collier had this to say:

“There is definitely room for synchronising some of the policies. There is no reason why licensing and planning cannot work together. In particular, the issue of noise comes up all the time. It is very difficult for an applicant to understand that they have to go to one regime and then another regime in a local authority, and that the standards are different. There is no reason why you could not synchronise those standards and have the same policies for licensing and planning.”<sup>135</sup>

135. Peter Rogers, a noise expert from Sustainable Acoustics, said:

“Having attended both, my view is that the planning process is probably far more prepared and helpful to achieve the outcome we are striving for. The licensing committee environment seems somewhat inconsistent—that is one word for it—and perhaps unhelpful in what we are trying to achieve. The single best thing that could be achieved is to remove the Chinese wall between licensing and planning to enable both things to be considered.”<sup>136</sup>

### *The concerns of residents*

136. We asked our witnesses to compare how the two regimes dealt with the concerns of residents. Anthony Lyons, from Kuit Steinart Levy LLP, a firm of Manchester solicitors, told us that “Residents have every opportunity to lodge their representations either individually or in concert against any application in licensing. I am not a planning practitioner, but I think residents have, if they are minded to use the process, the correct avenue to object and be heard in those objections.”<sup>137</sup>

137. However the other three members of the panel all stressed the additional opportunity residents have to put their views to the planning officer before

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133 When Ms Aantaa-Collier gave evidence she was working for the Wilkes Partnership; she is now Legal Director at Shakespeare Martineau.

134 [Q 177](#) (Leenamari Aantaa-Collier)

135 [Q 175](#) (Leenamari Aantaa-Collier)

136 [Q 177](#) (Peter Rogers, Managing Director, Sustainable Acoustics)

137 [Q 178](#) (Anthony Lyons, Partner, Kuit Steinart Levy LLP)

they even get to the planning committee. Karl Suschitzky, an environmental health officer with Derby City Council, explained this:

“The planning system allows additional dialogue at the pre-committee stage to resolve some of the issues, and licensing does not seem to. The way licensing seems to work is that residents can put in written representations at great length and they are presented to the committee for discussion, whereas in the planning system, as has been mentioned, there is a planning officer who has expertise in planning matters and there will be an opportunity to respond to some of those matters.”<sup>138</sup>

138. Peter Rogers said:

“In my experience of both scenarios, I have seen perhaps more opportunity in the planning process for residents’ concerns to be addressed early on. They may still have an issue that they want to express. They can do that to the committee and it will be considered. In the licensing situation, I see almost a lost opportunity to have dialogue before, and we end up with a situation that is far more charged in the committee environment, where residents want to be heard, and rightly so. There is an opportunity to learn from planning committees, ultimately to give the public a clear and consistent way of being treated.”<sup>139</sup>

139. It is not only the concerns of residents which are more likely to be adequately addressed in the planning process; as we have explained,<sup>140</sup> the procedure followed in planning cases is more likely to make sure that the committee receives input from responsible authorities whose views are important.

### **A single licensing and planning panel?**

140. We put to all these four witnesses the question: “Could you live with a situation where the two procedures were merged under the planning committee and certain individuals would be trained to deal with licensing?” Leenamari Aantaa-Collier replied: “It is definitely something to be explored seriously.” Peter Rogers agreed: “I do not think there is any reason why that should not be explored.”<sup>141</sup>

141. Anthony Lyons, from Kuit Steinart Levy LLP, a firm of Manchester solicitors, was again the dissenting voice on the panel:

“At first blush, to combine the two seems a really sensible arrangement, but when I thought about it at length ... I thought that actually there are totally separate regimes: different legislation; different policies; different application processes; different hearings and different professionals in planning committees on the one hand and in licensing committees on the other; and different appeal procedures. There is a debate to be had. Applicants often say, ‘Why do I have to tick the same box twice? I have to do a crime impact statement on my planning application and I have to go through how I avoid crime and disorder in my licence application’. There is an element of desire to remove that red tape and streamline the processes, but they are separate and should be kept that way.”<sup>142</sup>

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138 [Q 178](#) (Karl Suschitzky, Environmental Health Officer, Derby City Council)

139 [Q 178](#) (Peter Rogers, Managing Director, Sustainable Acoustics)

140 Paragraph 131

141 [Q 179](#) (Leenamari Aantaa-Collier)

142 [Q 174](#) (Anthony Lyons, Partner, Kuit Steinart Levy LLP)

142. We agree with Mr Lyons that there is different legislation, and that it should stay that way; we are not suggesting otherwise. Licensing law is, and will remain, separate from planning law. As in the case of licensing, there is bespoke legislation for a variety of topics, from protected species to the protection of heritage assets, which must be taken into account and followed in the planning regime. The planning system is well used to looking at other statutes which are relevant in particular circumstances. All the statutes have to be knitted together, and conformed with in a seamless whole. Adding the Licensing Act and its Guidance would represent nothing new.
143. But for the rest of Mr Lyons' criticism, our conclusion is different. It is precisely because there are "different policies; different application processes; different hearings and different professionals in planning committees on the one hand and in licensing committees on the other" that we believe that the regimes which are separate should not necessarily be kept that way.
144. The Mayor of London, through Philip Kolvin QC, his Night Time Commissioner, made this point:

"Planning tends to be a once for all decision operating in perpetuity, whereas licensing is flexible and can adapt to changing circumstances in the locality or the premises. In particular, review powers can be used to vary conditions including by altering trading hours, or even to remove licensable activities or revoke the licence, according to requirements of the individual case and locality."<sup>143</sup>

We agree that this is a valid distinction between the planning and licensing functions, but we do not see that this would prevent the two functions being performed by members of a single committee. There are provisions for varying and amending planning permissions and altering conditions, and for enforcement in the case of activities which go outside the terms of the permission, which all appear to be equivalent processes to those available in licensing.

### **Would a change impose a burden on local authorities?**

145. We would not advocate such a change if we thought that this would increase the burden on local authorities at a time of austerity, when their resources are being cut. We put to Ministers the question: "Would there be any advantage ... in making the licensing function an integral part of the planning process, with a single committee of the local authority dealing with both licensing and planning?" Sarah Newton MP replied:

"I do not think so. It would require a huge upheaval in the planning system. There would have to be primary legislation and a huge amount of training to enable people to make those decisions. The planning system has undergone considerable changes in the last couple of years; you have the neighbourhood planning legislation before you in the House of Lords at the moment. It is important that the current regime settles down. If there are issues with poor performance and poor decision-making, it is better to tackle them with education and training, to make sure that councillors understand the powers they have and use them well."<sup>144</sup>

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143 Written evidence from Mayor of London ([LIC0173](#))

144 [Q 211](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

146. We believe that this betrays a misunderstanding of the question. Planning legislation is certainly complex and the new legislation will do nothing to make it simpler; but we are not suggesting “a huge upheaval in the planning system”, or indeed any changes at all in planning law. The only change to primary legislation which would be needed would be amendment of sections 6–10 of the Licensing Act which provide for the establishment of licensing committees and their functions, and for the sub-delegation of their work to sub-committees.
147. Nor do we envisage “a huge amount of training”. Some training will certainly be needed and, as we explain in Chapter 5, will be needed whatever recommendations we make and whether or not they are adopted; but the training would be no more than is necessary to enable some planning officers and councillors to deal with licensing, in the same way that they currently already need and receive training to deal with planning for licensed premises. It is already the case that in some local authorities some of the same councillors sit on both committees. Scarborough Borough Council wrote: “Consideration should be given in having a joint Planning and Licensing Committee particularly as half our licensing committee members also sit on planning.”<sup>145</sup>
148. In the year ending 31 March 2016, local authorities in England and Wales received:
- 9,833 applications for new premises licences
  - 5,106 applications to vary the terms of a premises licence
  - 111 applications for new club premises certificates
  - 98 applications to vary the terms of a club premises certificate.

The majority of these were dealt with without a hearing; only 3,068 applications for a premises licence or club premises certificate and 68 personal licence applications went to a committee hearing. In that year 700 licensing reviews were completed, and 117 summary reviews.<sup>146</sup>

149. The figures for planning applications are not directly comparable, since they are collected quarterly and relate only to England. Between July and September 2016 district level planning authorities in England received 120,782 applications for planning permission, 94% of which were dealt with without a hearing. The result is that, in that quarter, some 7,000 applications went to a hearing, equivalent to 28,000 a year.<sup>147</sup> A 10% increase to take account of Wales would raise this to 31,000 hearings.<sup>148</sup>
150. These are not accurate figures and should not be relied on for other purposes. They do not take account of other work which can go to licensing committees,

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145 Written evidence from Scarborough Borough Council (LIC0014)

146 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016), Tables 6a, 6b and 7: <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

147 DCLG, ‘Planning applications in England: July to September 2016’ (15 December 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577548/Planning\\_Applications\\_July\\_to\\_September\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577548/Planning_Applications_July_to_September_2016.pdf) [accessed 10 March 2017]

148 In Wales in the year 2014/15 there were 24,203 planning applications: Welsh Government, ‘All Wales Planning Annual Performance Report 2014/15’ (March 2016) p 19: <http://gov.wales/docs/desh/publications/160322-planning-annual-performance-report-2014-15-en.pdf> [accessed 10 March 2017]



such as variations of licences and TENs, nor do they take account of other work which is dealt with by planning committees. Nor do they take into account that, among many hundreds of minor changes to domestic property, there will lurk the occasional multi-million pound development. But these figures suffice to make clear that the workload of planning committees is much greater than that of licensing committees—perhaps something of the order of 10 times greater—so that the nature of the work of planning committees would be significantly but not substantially different.

151. We emphasise that the overall workload of local authorities would remain unchanged. It might even follow that the simplification of administration and procedure would result in a saving of resources, but we have no evidence to support this, and do not rely on it as an argument in favour of change.

### Our conclusion

152. If, as we think, it is not only permissible but logical to look at licensing as an extension of the planning process, it would have been sensible for the Licensing Act to transfer the powers of licensing justices to the planning committees of local authorities, rather than set up a new and untried system of licensing committees with a new and different procedure, new staffing, and a new appellate process. Instead the result has been that each local authority has been able to deal with all aspects of land use through a planning committee with the single exception of licensed premises, which require a separate committee and a separate mechanism. Now that the system has been in operation for 11 years, we believe that this can be seen to have been a mistake and a missed opportunity.
153. We recognise that a suggestion that licensing committees should be abolished and their work amalgamated with that of planning committees is a radical one. It is not a change which should be made without first being trialled over a small but representative sample of local authorities over perhaps two years.
154. ***Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees. We recommend that this proposal should be trialled in a few pilot areas.***
155. We have considered when such trials should begin. Mr Lyons said that this was “one for the future; now is not quite the time to do that”.<sup>149</sup> But “now” is never the time. We have explained in the previous chapter how the current system took seven years to evolve. ***We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible.***
156. If our recommendations are accepted, some time must elapse before trials can start, because amendments will be needed to sections 6–10 of the Act to allow licensing authorities to send licensing work to planning committees. If, as we hope, the trials are successful, further time must elapse before the changes are complete. Improvement of the work of licensing committees cannot wait so long, and we explain in Chapter 5 what must be done without delay.

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149 [Q 177](#) (Anthony Lyons, Partner, Kuit Steinart Levy LLP)

## CHAPTER 4: APPEALS

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### The appellate system for licensing cases

157. Under the Licensing Act 1964,<sup>150</sup> and indeed under earlier legislation, a decision of licensing justices on the grant, refusal, renewal or revocation of a licence, or any other decision of the justices, was appealable to quarter sessions. On the creation of the Crown Court in 1972 the appeals were transferred to the Crown Court. The planned reform of licensing in 2000 retained this right of appeal. Chapter 12, headed “Fair Procedures and Appeals”, was precisely half a page long. The critical passage reads:

“The appeal process should provide an opportunity for mistakes in law to be put right, rather than for the body dealing with the appeal to review the case from scratch and substitute its own judgment for that of the licensing authority on the merits. For this reason we think that appeals should lie to the Crown Court sitting as an appeal court, comprising a judge sitting with two magistrates. This will ensure that licensing authorities are subject to effective and consistent legal supervision and also retain a continuing important role for the lay magistracy in licensing matters which reflects their knowledge of the area.”<sup>151</sup>

158. By the time the Licensing Bill was introduced, this policy had changed. Section 180 of, and Schedule 5 to, the Licensing Act 2003 provide that appeals against decisions of licensing authorities are to lie to magistrates’ courts and to be conducted by way of a hearing. In other words, the magistrate who previously had acted as the licensing justice became overnight the magistrate hearing appeals from the licensing authority which succeeded him. This remarkable change has certainly retained the local knowledge of the appellate tribunal. We consider in this chapter whether it has retained the other qualities which an appellate tribunal should display.

### *Numbers of appeals*

159. When the officials of Government departments gave evidence to us in July 2016, the figures for the year to 31 March 2016 were not yet available. Figures are not collected every year, and none were collected in the year to 31 March 2015. The figures quoted in oral evidence by Andy Johnson, the Head of Alcohol at the Home Office, were those for the year to 31 March 2014. He told us that in that year, out of more than 21,000 applications covering not just fresh applications but also applications for minor or major variations of licences, there were just 111 appeals. This equates to 0.5%. There were 117 appeals against review decisions out of about 830 reviews, about 14%.<sup>152</sup> The total of 228 appeals equates to 1% of decisions going to appeal.

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150 Licensing Act 1964, [section 21\(1\)](#)

151 Home Office, *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*, Cm 4696, April 2000, chapter 12

152 [Q 9](#) (Andy Johnson, Head of Alcohol, Home Office). In subsequent supplementary evidence Mr Johnson ([LIC0164](#)) clarified that an appeal, once lodged, features in the statistics even though compromised before the hearing.



160. Now that the Government statistics are available for the year to 31 March 2016 it can be seen that the number of appeals has declined:<sup>153</sup>

- There were 72 (as against 111) completed appeals against an application decision, which were accounted for by 29 local authorities; of those, the number ranged from 1 to 15 appeals in any one local authority. There were 304 local authorities that had no completed appeals against an application decision.
- There were 121 (as against 117) completed appeals against the licence review decision, which were accounted for by 64 local authorities; of those, the number ranged from 1 to 8 appeals in any given local authority. There were 270 local authorities that had no completed appeals against the licence review decision.
- 77 local authorities reported that at least one appeal was made against any decision and 257 local authorities reported that no appeals were made against any decision.<sup>154</sup>

161. A further challenge to a decision of a magistrates' court lies to the High Court by way of judicial review, but these are very infrequent; there were no completed judicial reviews of such decisions in the year to 31 March 2016.

162. Senior District Judge Emma Arbuthnot told us that:

“initially [after the commencement of the Act] there was an upsurge in appeals, but that appears to have settled and we are getting many, many fewer, probably in the last five years. We did a bit of research before coming here today. For example, Westminster, which is a pretty busy area for licensed premises, is running about one effective appeal a year. We checked in one or two other areas. I think Cornwall has one a year, and in Norwich there are one or two a year.”<sup>155</sup>

*Reasons for the low number of appeals*

163. A number of reasons have been offered for the very small number of appeals. One, put forward by Councillor Peter Richards, was that this demonstrates the quality of the initial decisions: “I think we make very good decisions. I think that is evidenced by the fact that very rarely do we have any appeals.”<sup>156</sup> The Home Office told us in their written evidence that “some licensing authorities suggested that having to take into consideration the possible financial consequences of their decision making has meant their decisions were considered and well-reasoned in order to be more robust in court.”<sup>157</sup>

164. We find this entirely unpersuasive. Every decision has a winner and a loser, and we cannot believe that 99% of parties to hearings are so impressed by the quality of the licensing committee's decision that, though unsuccessful,

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153 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016), section 7: <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

154 There are 350 local authorities, but 16 of them did not reply to the Home Office request for figures.

155 Q 124 (Senior District Judge Emma Arbuthnot, Chief Magistrate)

156 Q 27 (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council)

157 Written evidence from Home Office (LIC0155)

they decide not to appeal. We agree with Jon Foster from the Institute of Alcohol Studies:

“I agree that the level of appeals is not a reliable indicator that the Act is working well and decisions are always made correctly, because it does not show those decisions which perhaps should have been taken to appeal, but were not because they were favourable to the licensed trade. Local authorities not having the financial ability or political will to pursue difficult cases and go to appeal, or to make strong decisions which could potentially be appealed, is a big factor. The influence of the trade was a big factor according to the people I spoke to. So having a low number does not tell you much.”<sup>158</sup>

165. The Home Office did not agree with Mr Foster that the cost to local authorities of defending the decisions of their licensing committees was likely to be a major factor. In their written evidence they wrote that they had held discussions with representatives of the licensed trade, licensing solicitors and local government to look at “whether licensing authorities had been penalized for their decisions by magistrates’ courts awarding costs against them, and whether this had an impact on decision-making. In certain cases, costs have been awarded against licensing authorities, but it was generally found that this did not deter licensing authorities from reviewing premises licences where evidence suggested that the licensing objectives were being undermined.”<sup>159</sup>
166. This may be true of appeals against review decisions, which as we have said run at 14%, but it does nothing to explain the much smaller rate of appeals against application decisions.

### *Compromising appeals*

167. We believe the major reason for the low number of appeals is that many matters which might go to appeal, and which one of the parties would certainly wish to take further, are settled before an appeal is heard or even lodged. District Judge Elizabeth Roscoe said: “Many more appeals start than actually finish with a court hearing.”<sup>160</sup>
168. Normally the settlement of disputes without a further round of litigation is to be welcomed, but only if all the parties feel that the resulting compromise takes their interests fully into account. Andy Johnson was satisfied that this was what happened:

“... part of the reason why the number [of appeals] is so low is that there is a lot of discussion between applicants and local authorities through informal mediation during the course of the licensing process, where, as with any mediation, there will be a bit of give and take, so conditions may be added to the licence after the application has been submitted to address a particular concern of a local authority. We think that informal system before a decision is taken by a licensing committee is one that works effectively.”<sup>161</sup>

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158 [Q 49](#) (Jon Foster, Institute of Alcohol Studies)

159 Written evidence from Home Office ([LIC0155](#))

160 [Q 127](#) (District Judge Elizabeth Roscoe, Westminster Magistrates’ Court)

161 [Q 9](#) (Andy Johnson, Head of Alcohol, Home Office)

169. A phenomenon that the evidence highlighted was that, on occasion, the decision of the sub-committee was so clearly flawed that the solicitors for the licensing authority were highly motivated to reach a compromise with the appellant in advance of any appeal hearing, in order to minimise a real risk of costs. The evidence from Mr Gerald Gouriet which we have already quoted<sup>162</sup> typifies this: “I had a refusal after which a committee member came up to me and said, ‘Do not worry. You will get it on appeal, but we could not go against the residents’.”<sup>163</sup>
170. John Gaunt gave us an example of the effective settlement of appeals before a hearing: “We have had two [appeals] in the last two years, and in both cases we appealed against a restriction imposed on a new licence application. It never got as far as the magistrates, because we engaged with the council—the licensing authority—by way of informal mediation. In the nicest possible way, it conceded the point we were appealing, we got what we wanted and the appeal was withdrawn.”<sup>164</sup>
171. Mr Gaunt may have got what he wanted, but the same may not be true of all those taking part in the proceedings. Wirral Council put the opposite side of the picture:
- “When such mediation takes place this is confusing for local residents who have attended a hearing and then expect the decision to be implemented. When advised that the decision is subject of an appeal the expectation is that the courts will make the decision. Changes / compromises can be difficult for local residents to engage in and ultimately accept when a formal appeal hearing has not taken place.”<sup>165</sup>
172. We believe this is a valid point. The Federation of Bath Residents’ Associations thought that “the process might well be improved if those making representations were also privy to any mediation, and so offered their advice on preventing problems with the community.”<sup>166</sup>
173. ***Licensing authorities should publicise the reasons which have led them to settle an appeal, and should hesitate to compromise if they are effectively reversing an earlier decision which residents and others intervening may have thought they could rely on.***

*The lack of precedent*

174. We have explained in Chapter 2 how a constant criticism of decisions of licensing committees is the variation and inconsistency. The decisions of magistrates’ courts should help to provide consistency, and the main reason they do not is that they are often inaccessible, and when available, are often themselves inconsistent.
175. This arises from the status and practice of magistrates’ courts. They are not courts of record, so that their decisions are not precedents binding on magistrates deciding identical or similar issues in future. They can of course offer guidance for subsequent decisions, and be of persuasive value. That however depends on their decisions being recorded and accessible. Often

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162 Paragraph 103

163 [Q 145](#) (Gerald Gouriet QC)

164 [Q 121](#) (John Gaunt, Partner, John Gaunt and Partners)

165 Written evidence from Wirral Council ([LIC0053](#))

166 Written evidence from Federation of Bath Residents’ Associations ([LIC0031](#))

they are not. This applies in particular to the decisions of lay magistrates. District Judge Elizabeth Roscoe explained: “Perhaps the fundamental point is that they do not have to be written out and handed down. Certainly, when I have done them I have found it easier to do that, which means that I too have a record if I am judicially reviewed. That is always helpful. Generally speaking, longer cases especially are written down ... ”<sup>167</sup>

176. Even if judgments are written down, are known about, are available and are disseminated, their value is very limited, as was clear from the evidence of Senior District Judge Emma Arbuthnot:

“We have regard to [earlier judgments]; we read them. The example in point is Judge Roscoe’s judgment that I referred to earlier, when she decided quite differently from an earlier judge who had looked at the same point. She was not bound by that earlier judgment, but the parties in front of her, as I understand from her judgment, referred her to it. She said in terms, ‘I do not agree with that earlier judgment’. You have regard to it; you read it, and you may decide completely differently that that judge got it wrong, and that was what she did.”<sup>168</sup>

177. The case to which Senior District Judge Arbuthnot referred deals with the applicability of interim measures, an important matter since an interim order suspending a licence can have a serious, possibly fatal, effect on the business of the licence holder. Box 3 shows the problem raised by the case.

### Box 3: The lack of precedent

In a case in 2011<sup>169</sup> the police issued a closure notice on premises. The police applied for a summary review of a premises licence. This came before the licensing authority within 48 hours, and they took the interim step of suspending the licence. The licence holder was not heard. He challenged this at a subsequent interim steps hearing. The issue was whether the interim steps, which included suspension of the licence, lapsed at this stage or continued until the appeal was heard by the magistrates (in this case over 6 months later). In that case District Judge Knight held that the interim steps lapsed so that the sale of alcohol could continue pending the appeal. She said that the drafting of the statute “defies understanding by any human being”. But in an almost identical case in 2014 District Judge Roscoe, although aware of the earlier decision, was not bound by it. She said: “The decision in *Oates* is ... not binding upon me and, I think, is wrong.” She came to the opposite conclusion: that the interim steps continued in force, so that the continued sale of alcohol was unauthorised pending the appeal.<sup>170</sup>

178. The only way, short of legislation, that this issue could have been resolved was by a decision of the High Court on judicial review. In 2013 and 2014 the same point arose in two different cases. In both an application was made to the High Court for judicial review; in both the judge refused permission. In the first of these the judge, Dingemans J, said in refusing permission

167 [Q 129](#) (District Judge Elizabeth Roscoe, Westminster Magistrates’ Court)

168 [Q 130](#) (Senior District Judge Emma Arbuthnot, Chief Magistrate)

169 *Chief Constable of Cheshire v Gary Oates*, Halton Magistrates’ Court, 19 December 2011

170 *The Commissioner of the Metropolitan Police v Mayfair Realty Ltd (The Lord Mayor and the Citizens of the City of Westminster, Interested Party)*, Westminster Magistrates’ Court, 22 July 2014. In our consideration of police closure powers, we refer to District Judge Roscoe’s oral evidence on the effect of this case (paragraph 428).

that he thought that interim measures could take effect beyond the review determination.<sup>171</sup> In the second, Collins J suggested the opposite,<sup>172</sup> but since he too was refusing permission, the dicta of both judges were obiter and so not binding in any future magistrates' court appeal.

179. Collins J said that “the legislation is badly drafted and by no means clear”. We regret that he did not take that opportunity to clarify it, a regret shared by the Home Office in their Impact Assessment for a provision in the Policing and Crime Bill.<sup>173</sup> The Policing and Crime Act 2017 has now inserted into the Licensing Act a lengthy new section 53D which attempts to resolve the issue, and which will enter into force on 6 April 2017.<sup>174</sup> The fact remains that for two and a half years an important issue has been subject to two conflicting judicial decisions, neither of which was binding in any future case which raised the point.

*The quality of appeal hearings*

180. To us, the most remarkable of all the figures we have quoted is that as many as 257 of the 350 local authorities reported no appeals at all in the course of the year. It is legitimate to infer from this that there must be a number of local authorities—perhaps a substantial number—against whose decisions there are no appeals in two, maybe three or more years. It is therefore hardly surprising that many magistrates' courts have little or no expertise in an area which they come across so infrequently. Nor is training the answer because, as Senior District Judge Emma Arbuthnot said, “The problem with training is that we do it so rarely that I am not sure it would be worth doing it for the few cases we have.”<sup>175</sup>
181. The London Borough of Hounslow drew a distinction between lay magistrates and professional district judges:

“We also believe that appeals are too complicated for lay magistrates. Whilst many appeals are allocated to a district judge, we have on occasion had magistrates sitting on appeals. The clerk is also not a specialist in licensing law and we have found that the system is unfair to all concerned because the knowledge of the law is not present and some of the arguments are very technical and legally advanced. Magistrates are not trained in licensing and it is unreasonable to expect them to grasp the often significant volumes of evidence, law and case law.”<sup>176</sup>

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171 *R (on the application of 93 Feet East Ltd) v London Borough of Tower Hamlets* [2013] [EWHC 2716](#) (Dingemans J), 16 July 2013 [accessed 10 March 2017]

172 *R (on the application of Sarai) v London Borough of Hillingdon* (Collins J), 27 August 2014 : <http://modgov.hillingdon.gov.uk/documents/s23457/Appendix%202.pdf> [accessed 10 March 2017]

In the latter case at an earlier hearing a different judge (Mostyn J) had granted an order lifting the interim steps because of the claimants' potential to “suffer irredeemable and severe economic damage”.

173 Home Office, ‘Impact Assessment: Policing and Crime Bill: Summary Reviews and arrangements’, paragraph 16: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499372/Impact\\_Assessment\\_-\\_Alcohol\\_Licensing\\_Summary\\_Reviews\\_and\\_Interim\\_Steps.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499372/Impact_Assessment_-_Alcohol_Licensing_Summary_Reviews_and_Interim_Steps.pdf) [accessed 10 March 2017]

174 Section 137 of the Policing and Crime Act 2017 will enter into force on 6 April 2017: see Regulation 3 of the Policing and Crime Act 2017 (Commencement No. 1 and Transitional Provisions) Regulations 2017 ([SI 2017/399](#))

175 [Q 124](#) (Senior District Judge Emma Arbuthnot, Chief Magistrate)

176 Written evidence from London Borough of Hounslow ([LIC0025](#))



### Comparable appellate structures

182. Under the Gambling Act 2005, operating and personal licences are issued by the Gambling Commission, and appeals from the Commission's decisions go to the First-Tier tribunal, and thence on a point of law to the Upper Tribunal. But premises licences are also needed and these, like premises licences for the sale of alcohol, are issued by the local authority, following a procedure very similar to that for alcohol premises licences; and, as in the case of those licences, an appeal lies to the magistrates' court.
183. Another not dissimilar system of appeals is that for taxi licences. They are granted, refused, suspended or revoked by local authorities (except in London where the duty falls to Transport for London). However due to a historical anomaly, taxi vehicle owners in England and Wales outside London have a right of appeal directly to the Crown Court, whereas private hire vehicles can only appeal to the magistrates' court in the first instance. In London the first stage is an application to the licensing authority to reconsider its decision, followed by an appeal to the magistrates' court.
184. The whole law relating to taxis, including the licensing system and appeals from decisions, was considered in great detail by the Law Commission.<sup>177</sup> They consulted widely, and their recommendations were that there should be (i) a right to require the licensing authority to reconsider its original decision (though this stage could be bypassed); (ii) a right of appeal to the magistrates' court; and then (iii) a right of further appeal to the Crown Court. These recommendations have yet to be implemented.
185. We mention these only to show that if, as we think essential, the appellate system for alcohol licences needs reform, there are a number of choices. Yet other possibilities would be a right of appeal directly to the Crown Court (which, as we have explained, is what was originally envisaged),<sup>178</sup> or to the County Court. It is anomalous that appeals in civil matters like licensing should lie to the Crown Court, with its primarily criminal jurisdiction, rather than to the County Court with its civil jurisdiction. We canvassed briefly with some of our witnesses the option of an appeal to the County Court, but none showed any particular enthusiasm for it.<sup>179</sup>

### *The appellate system for planning cases*

186. If, as we have concluded in the previous chapter, there is a strong case for transferring the functions of local authority licensing committees to planning committees, it follows that there is an equally strong case for considering whether, once planning committees deal with alcohol licences, licensing appeals should not follow the same route as appeals in planning cases.
187. The decisions of planning authorities are appealable to planning inspectors. They are not a court—nominally they act on behalf of the Secretary of State—but, unlike magistrates, they are trained and experienced in that topic. The Planning Inspectorate employs some 300 planning inspectors who have a wide range of backgrounds and expertise. Appeals with a technical element,

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177 Law Commission report on *Taxi and Private Hire Services*, Law Com No 347, Cm 8864, May 2014: [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347\\_taxi-and-private-hire-services.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf) [accessed 10 March 2017]

178 See paragraph 157

179 For example, [Q 126](#) (Senior District Judge Emma Arbuthnot, Chief Magistrate)



such as waste, heritage asset, renewable resources, and so forth will often be allocated to an inspector with a specialist background in that area.

188. Appeals may be brought before an inspector by one of three routes: written representations, less formal hearings, or full inquiries. Parties may make representations at the time of the submission of the appeal as to which procedure they believe is more appropriate, but it is the inspectorate that makes the final decision as to the route which will be adopted.
189. Planning appeal decisions are not handed down immediately at the end of the appeal. The inspector considers everything they have read and heard, and writes up a formal Decision Letter, which is then handed down to all parties. The time within which this is done will depend on the formality of the inquiry, and can range from 4 weeks in the case of written representations to 9 weeks in the case of a hearing, and longer for a full inquiry.<sup>180</sup>
190. Those who attend hearings or inquiries can indicate that they would like to receive a copy of the decision by email. Decisions are also posted online and publicly available for all to access. They are precedents—there is case law saying that consistency is important, and that a previous inspector’s decision on the same point is a “material consideration” to which an inspector in a subsequent case must give appropriate weight. Inspectors must consider a previous decision drawn to their attention and must give reasons if they intend to depart from it. While the previous decision is not binding, a capricious departure from a previous decision is appealable.
191. There are further statutory appeals to the High Court provided for in the Town and Country Planning Act 1990 (based on identified errors in the Inspector’s approach, not just a re-hearing on the merits); these would not be relevant in licensing cases. Judicial review also lies against the decisions of Inspectors based on public law grounds.

### Transferring licensing appeals to planning inspectors

192. In the early stages of our inquiry we sought views on changes to the appellate system, though not specifically canvassing the possibility of transferring licensing appeals to the planning inspectorate. For the Home Office, Andy Johnson said:

“We have recently discussed the appeal system in licensing with our stakeholders—licensing solicitors, local government and the trade—and they are happy with the way the system works at the moment. They did not feel that there was a need for additional appellate authorities or different rights of appeal to different courts. They liked the system as it works at the moment, because it helps them to resolve problems at that local level without recourse to the courts.”<sup>181</sup>

He added: “No one has suggested that there needs to be either another appellate authority or the creation of some form of formal mediation process to resolve disputes.”<sup>182</sup>

180 Planning Inspectorate, ‘Appeals: how long they take’ (16 January 2017): <https://www.gov.uk/guidance/appeals-average-timescales-for-arranging-inquiries-and-hearings> [accessed 10 March 2017]

181 Q 9 (Andy Johnson, Head of Alcohol, Home Office)

182 *Ibid.*

193. In our last evidence session we specifically put to ministers the possibility of a transfer to the planning inspectorate, and Sarah Newton MP replied: “You raise an important point about who is most appropriate to hear the appeals. The planning inspectorate is a well regarded system that works pretty well. I have not seen a huge amount of evidence to suggest that the magistrates’ system is not an equally effective route for considering those particular cases.”<sup>183</sup>
194. We asked a number of other witnesses for their views. Sheena Jowett JP, the Deputy Chairman of the Magistrates’ Association, replied: “I firmly believe that [licensing appeals] ought to stay in magistrates’ courts. We are local; we know the local situation, and we can weigh the evidence put before us.”<sup>184</sup> If the evidence magistrates hear matches their local knowledge, that may be helpful; if not, they cannot substitute their own knowledge for the evidence. Planning inspectors are not necessarily based locally, but will always do a site inspection to familiarise themselves with the location, which will sometimes give them rather closer local knowledge than the magistrates.
195. We do not know which of “licensing solicitors, local government and the trade” were consulted by the Home Office, but certainly the majority of those from whom we took evidence were not “happy with the way the system works at the moment”, as is clear from the evidence we have cited earlier. A number of them compared the licensing appellate system unfavourably with the planning inspectorate. Joshua Simons & Associates Ltd wrote: “The appeal procedure should be organised through a new government agency that deals solely with licensing appeals similar to the Planning Inspectorate.”<sup>185</sup>
196. Gerald Gouriet QC drew this contrast between licensing and planning appeals:
- “The inescapably haphazard quality of licensing committees demands an effective appeals process capable of correcting bad decision-making. Appeals ‘on the merits’ to a tribunal no higher than a magistrates’ court, of cases, the commercial and other implications of which (investment and jobs) may be of the greatest importance, often fall short of this requirement. Planning decisions, by way of contrast, go before an experienced planning inspector; whereas licensing appeals may be heard by a lay bench, or by a district judge, inexperienced in licensing and impatient to clear his/her criminal list.”<sup>186</sup>
197. Mr Gouriet added: “Moreover, and importantly, the appellate limitations brought about by the Hope & Glory case<sup>187</sup> can render the appeals process illusory.” The appellate limitations to which he refers are the decision of Burton J in the Administrative Court, with which the Court of Appeal agreed, in which he held that the task of the magistrates is not to hear the case afresh and reach their own conclusions, but simply to decide whether

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183 [Q 212](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

184 [Q 128](#) (Sheena Jowett JP, Deputy Chairman, Magistrates’ Association)

185 Written evidence from Joshua Simons & Associates Ltd ([LIC0133](#))

186 Written evidence from Gerald Gouriet QC ([LIC0056](#))

187 *R (on the application of Hope and Glory Public House Ltd) v City of Westminster Magistrates’ Court* [2011] [EWCA Civ 31](#) [accessed 10 March 2017] High Court (Burton J). Another ground for his decision was that magistrates reaching their own conclusions on the facts without hearing the evidence would be contrary to Article 6 of the European Convention on Human Rights; Court of Appeal: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html> [accessed 10 March 2017]

the licensing authority was wrong in reaching the decision it did; and that it is for the appellant to persuade the magistrates of this.<sup>188</sup>

198. Professor Light made this suggestion:

“The solution may be something like the planning appeal system. As you may know, in that system there are three ways the appeal can be heard ... At the moment, [in licensing] there is nothing but a full-blown hearing. I did an appeal a couple of weeks ago to decide whether or not Subway could heat up a sandwich at 11 o’clock. We spent two days in the magistrates’ court, with tens of thousands of pounds of costs ... which is ridiculous ... With planning, you can do it on the papers, which is cheap; you can do it in a round table, which is not so cheap; or you can have a full tribunal like an inquiry, which is perhaps like the courts. I do not know whether it would work, but it may be something to think about.”<sup>189</sup>

199. Karl Suschitzky, who as an environmental health officer had experience of dealing with both appeal systems, thought that “the idea of having a similar system to the one in planning, with planning inspectors, people dealing with appeals, or even committees themselves, having much more experience of dealing with licensing matters can only be a good thing.”<sup>190</sup> Leenamari Aantaa-Collier said: “A holistic approach would be much better, such that inspectors would look at both regimes.”<sup>191</sup>

### **An additional burden?**

200. When looking at the possibility of integrating licensing committees with planning committees, we looked to see whether this would impose an additional burden on local authorities. A transfer of the appellate function would have different consequences, since magistrates’ courts are the responsibility of the Ministry of Justice (MoJ), while planning inspectors are employed by the Planning Inspectorate which is an executive agency of the Department for Communities and Local Government (DCLG).

201. Such a change would therefore reduce, though hardly significantly, the burden on magistrates’ courts, and correspondingly increase the work of the Planning Inspectorate. In the year to 31 March 2016 there were 11,783 planning appeals,<sup>192</sup> 89% of which were dealt with by written representations, 7% by hearings and 4% by full inquiries.<sup>193</sup> This compares with 72 completed appeals against a licensing application decision and 121 against a licence review decision in that year, a total of 193,<sup>194</sup> or under 2% of the number of planning appeals.

202. A further advantage of a transfer would be that in appropriate cases an inspector could dispose of a licensing appeal by the written procedure, thereby meeting the concern of Professor Light.<sup>195</sup> We accept that the proportion of licensing appeals going to a hearing might be greater than

188 Written evidence from Gerald Gouriet QC ([LIC0056](#))

189 [Q 121](#) (Prof Roy Light, Barrister, St John’s Chambers)

190 [Q 181](#) (Karl Suschitzky, Environmental Health Officer, Derby City Council)

191 *Ibid.*

192 Town and Country Planning Act 1990, [section 78](#)

193 Planning Inspectorate, ‘Planning Inspectorate Statistics’ (1 November 2016), Table 2.1: <https://www.gov.uk/government/statistics/planning-inspectorate-statistics> [accessed 10 March 2017]

194 See paragraph 160

195 See paragraph 198

the 11% of planning appeals going to a hearing or an inquiry, but even if none of the 193 licensing appeals that year had used the written procedure, that would still have increased the combined number of hearings (871) and inquiries (446) by only 15%.

203. The average salary of a district judge is almost double that of a planning inspector, but some appeals are currently decided by lay justices who are not salaried. We see no reason why the cost to the Planning Inspectorate, and hence DCLG, of transferring licensing appeals to them should exceed the saving to MoJ.

### **Our conclusion**

204. We agree with Leenamari Aantaa-Collier when she said: “An inspector would be perfectly capable of looking at licensing as well as they look at conservation, highways or environmental issues. They are used to looking at different things, gathering together the information and making a decision. There is no reason why an inspector could not do the same with licensing.”<sup>196</sup> Not all inspectors are trained in all these specialist fields. Some would need to be specifically trained to deal with licensing appeals. With that training, we anticipate that they would handle appeals as capably as district judges now do, and better than those lay magistrates who hear such appeals so infrequently that their lack of knowledge and experience of this branch of the law is a real impediment to justice.
205. We concluded in the previous chapter that there were strong arguments for transferring the functions of local authority licensing committees to planning committees, and we recommended that this should be trialled as soon as possible. We have considered whether our recommendation on the transfer of the appellate function should be delayed until the outcome of those trials is known. We do not see any reason for such a delay. A transfer of the appellate function is in our view needed as soon as possible. Whatever the outcome of the trials, it is immaterial whether the decision being appealed was made by a licensing committee or a planning committee. Either way, it seems to us that the benefits of appeals going to planning inspectors are clear.
206. ***We recommend that appeals from licensing authorities should no longer go to magistrates’ courts, but should lie to the planning inspectorate, following the same course as appeals from planning committees. This change is not dependent on the outcome of our recommendations on the licensing function, and should be made as soon as possible.***

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196 [Q 181](#) (Leenamari Aantaa-Collier)

## CHAPTER 5: IMMEDIATE CHANGES

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### Introduction

207. A trial of integration of licensing committees with planning committees will need primary legislation, as will changing the appeal system so that appeals lie to planning inspectors rather than magistrates' courts. We accept that those recommendations can only be implemented in a matter of years rather than months. There are many features of the existing system that can and must be put right and that cannot wait so long. Fortunately they can all be remedied by amendments to secondary legislation or to the Guidance, or simply by changes of practice. In this chapter we deal with those issues.

### Licensing committees

208. Licensing committees will continue to decide licensing applications and all the other issues they currently deal with for a considerable time. There is much that can be done immediately to improve the quality of those sitting on those committees.

### *The Councillors sitting on a sub-committee*

209. The responsibility for a sub-committee is ultimately that of the local authority, and thereafter of the councillor appointed as chair of the licensing committee. It is for that councillor to ensure that the sorts of matters we have described in earlier chapters do not occur. It should never be possible for a councillor to chair a sub-committee when the only representation is from his wife. If, as Mr Gouriet told us,<sup>197</sup> there are councillors who reach a decision knowing it to be wrong because they could not face certain people if they decided otherwise, the chair will know who those councillors are, and should not be afraid to refuse to let them sit. Councillors should always put first the interests of those they serve.
210. The White Paper issued in April 2000 which led to the creation of licensing committees stated:<sup>198</sup> "It will be important to establish in statute which councillors would be automatically disqualified from participating." We agree, but the Act contains no provision of this kind.<sup>199</sup> The White Paper continues: "In addition, we think it right that any councillor representing the ward in which premises that are the subject of proceedings are situated should also not participate. This will avoid the possibility of particular individuals coming under unreasonable pressure, for example, close to elections." Again we agree. However not only does no provision seem to have been made for this in the Act or in secondary legislation, plainly councillors do sometimes participate in proceedings affecting premises in their own wards. John Miley, the Chair of the National Association of Licensing and Enforcement Officers (NALEO), told us:

"We try very hard to ensure that the panel members, and particularly the ward members, are not unduly influenced in the process. It is a very difficult balancing act, because that is sometimes difficult to get ... We pick the panel carefully. We only have a pool of 15 members to choose from to hear the case, so we find out who is available first and try to

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197 [Q 150](#) (Gerald Gouriet QC)

198 Home Office, *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*, Cm 4696, April 2000, paragraph 125.

199 Unlike the Licensing (Scotland) Act 2005: see [Schedule 1](#).



avoid any clashes with the borders of the wards. Sometimes it cannot be helped, unfortunately.”<sup>200</sup>

211. There is nothing in the Act, or in the Licensing Act 2003 (Hearings) Regulations 2005<sup>201</sup> (the Hearings Regulations), or in the section 182 Guidance giving any indication of the circumstances in which councillors should decline to sit on a sub-committee when they have too close an interest in the outcome of the hearing, either personally or as representatives of particular wards; nor is the conduct of members of sub-committees during hearings mentioned. Plainly ministers assumed that councillors could be relied on to disqualify themselves from sitting when necessary, and to conduct themselves appropriately; and plainly ministers were not always correct in that assumption. We believe the authority of the chair of the licensing committee would be reinforced if the Guidance were amended to make it clear that oversight of the conduct of sub-committee hearings is the responsibility of the chair of each licensing committee, and that where necessary the chair can give rulings on this generally or to individual councillors. The statutory authority of the Guidance should reinforce the importance of this.
212. Parties appealing against a sub-committee’s ruling do not usually raise procedural defects in support of their appeals, but they are entitled to do so, and may do so if costs are an issue, as they may be if, for example, the appeal was made necessary by poor reasoning of the sub-committee. We believe the Guidance should spell this out. No one should have to spend money on an appeal made necessary solely by defects at the sub-committee stage.
213. ***The section 182 Guidance should be amended to make clear the responsibility of the chair of a licensing committee for enforcing standards of conduct of members of sub-committees, including deciding where necessary whether individual councillors should be disqualified from sitting, either in particular cases or at all.***

### *Training*

214. We have already set out in Chapter 3 the concerns of some of our witnesses about the inadequacy of training of councillors who sit on licensing committees.<sup>202</sup> The Association of Licensed Multiple Retailers (ALMR) told us: “It would help if there was national training for councillors sitting on licensing committees some of whom are more keen to use the decision making process to simply make political points.”<sup>203</sup>
215. Councillor Peter Richards told us: “While we have compulsory training, I am sometimes concerned that it is not sufficient. We have three hours of compulsory training per year for our licensing members. As the regulatory chairman, I encourage all our members to undertake further training so that they are fully informed and can make sound decisions, which they do, but I find that sometimes we may be lacking or the councillors may be lacking. It is important that a minimum requirement for training is introduced.”<sup>204</sup>

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200 [Q 60](#) (John Miley, National Chair, National Association of Licensing and Enforcement Officers)

201 Licensing Act 2003 (Hearings) Regulations 2005 ([SI 2005/44](#))

202 For example, Gill Sherratt (paragraph 106)

203 Written evidence from Association of Licensed Multiple Retailers ([LIC0150](#))

204 [Q 27](#) (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council)



216. It seems to us that three hours of compulsory training each year might be just about adequate to enable a councillor with experience of licensing matters who habitually sits on licensing committees to keep up with the frequent developments in licensing law. Plainly much longer than three hours of training is essential before an inexperienced councillor can be allowed to sit on a sub-committee for the first time. How much training would be adequate, and what form it should take, are not matters on which we have received any evidence or on which we are well qualified to advise.
217. One problem with laying down strict rules for minimum training is the great variation in the numbers of hearings. In the year to 31 March 2016, 51 of the 350 local authorities had no premises licence/club premises certificate applications that went to a committee hearing, and 310 local authorities had no personal licence applications that went to a committee hearing. In 154 local authorities no review was completed.<sup>205</sup> Where a significant proportion of licensing committees hold no hearings at all from one end of the year to the next, it is scarcely surprising that the expertise among councillors on those committees is lacking. But it would also be a waste of resources to require all councillors who might potentially have to sit on a sub-committee to be fully trained despite the fact that only a few of them might have to sit. This is a matter which must be looked at in detail by those concerned.
218. *We recommend that the Home Office discuss with the Local Government Association, 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 the length, form and frequency of refresher training.*
219. We agree with Professor Light that “appropriate training for those involved in the process—councillors, officers, legal advisors—is essential and should be compulsory before members of the licensing committee sit on a hearing.”<sup>206</sup> The Greater Manchester Combined Authority told us that: “In Scotland, a councillor who is a member of a Licensing Board must not take part in any proceedings of the Board until the member has produced the evidence required that they have received approved mandatory training.”<sup>207</sup> They suggested that this requirement should be considered in England and Wales. We agree that this would be sensible.
220. *The section 182 Guidance should be amended to introduce a requirement that a councillor who is a member of a licensing committee must not take part in any proceedings of the committee or a sub-committee until they have received training to the standard set out in the Guidance.*

### Licensing hearings

221. Regulation 9 of the Hearings Regulations allows committees to dispense with hearings where all parties have reached agreement following mediation. If, despite the agreement of the parties, the sub-committee still insist on holding a hearing, it is for them to justify the need for this.

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205 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

206 Supplementary evidence from Professor Roy Light ([LIC0168](#))

207 Written evidence from Greater Manchester Combined Authority ([LIC0103](#))

222. *We recommend that where there are no longer any matters in dispute between the parties, a sub-committee which believes that a hearing should nevertheless be held should provide the parties with reasons in writing.*
223. When sub-committees do need to meet, the first issue is the quorum. Section 9(1) of the Act allows licensing committees to establish sub-committees “consisting of three members of the committee”, which suggests that three is the quorum. However section 9(2) goes on to say that Regulations may make provision about the quorum for sub-committee meetings, suggesting the possibility of a figure other than three. On this the Hearings Regulations are silent. Professor Light wrote: “Yet two members sometimes sit (if they disagree the chair’s casting vote effectively means the decision is made by one person). At a recent hearing there were five members sitting on the sub-committee.”<sup>208</sup> This seems remarkable, given that the Act states that sub-committees consist of three members.
224. The only statutory guidance on the conduct of hearings is brief, and is contained in regulations 21–24 of the Hearings Regulations, set out in Box 4.

**Box 4: Extract from the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44**

21. Subject to the provisions of these Regulations, the authority shall determine the procedure to be followed at the hearing.
22. At the beginning of the hearing, the authority shall explain to the parties the procedure which it proposes to follow at the hearing and shall consider any request made by a party under regulation 8(2) for permission for another person to appear at the hearing, such permission shall not be unreasonably withheld.
23. A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.
24. The authority must allow the parties an equal maximum period of time in which to exercise their rights provided for in regulation 16.

Source: *Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44)*

225. These Regulations appear to leave a great deal to the discretion of the sub-committee—perhaps too much. But it seems that in practice hearings seldom take this course. Gerald Gouriet QC explained:

“Home Office Guidance advises that licence hearings should take the form of ‘a discussion led by the chair’. I have never attended a single licensing hearing whose procedure was remotely similar to that description. Licensing committees tend to follow the somewhat ritualistic procedures of a local authority meeting—minutes read and approved, nomination for chair, declarations of interest, etc. A rigid adherence to the printed Agenda, for example, strongly militates against “discussion”. I have found that any attempt to correct a fundamental mistake, because of which a hearing will proceed tangentially off-course, can be silenced until the precise moment in the agenda arrives for that party to be

208 Supplementary evidence from Professor Roy Light ([LIC0168](#))

permitted to speak. I have seen 1½ to 2 hours of a hearing unnecessarily proceed late into the night, because neither I nor the applicant nor the barrister appearing for the police were allowed, despite several attempts on our part, to point out that the 30 conditions under detailed discussion between committee members and their legal officer were agreed and in any event not relevant to the review in hand.”<sup>209</sup>

226. A great deal plainly depends on the quality of the chairmanship. There needs to be an appropriate degree of formality, and consistency about basic matters such as which party should address the Committee first; but there also needs to be flexibility to avoid the results of rigid adherence to self-imposed rules, as described by Mr Gouriet. Some latitude must be allowed to those who are unused to appearing at hearings.

227. The setting of time limits was a particular bone of contention for Professor Light, who gave us an example: “at a recent hearing parties were allowed 15 minutes to give evidence and two minutes for a closing statement—for the four objectors this time to be divided between them”.<sup>210</sup> Mr Gouriet said, “A committee drumming its fingers on the table and constantly looking up at the clock is not exactly receptive, even to just five minutes of submissions.”<sup>211</sup>

228. Professor Light thought that:

“The legal advisor is crucial not only to advise the committee on the law but also to steer the committee procedurally and to ensure that matters progress fairly and impartially. For example, a person making representations is required to confine their evidence to matters raised in their written representation (they can of course expand on these issues). It is good practice, often not followed by committees, for the committee chair to refer the hearing to the written representation to ensure that the oral evidence is based on the written representation. Further, it is essential that the chair or legal advisor intervenes if new issues are introduced outside of that contained in the written representation. This should not be left to the applicant/respondent to raise.”<sup>212</sup>

229. ***The Hearings Regulations must be amended to state that the quorum of a sub-committee is three.***

230. ***Regulations 21 and 23 of the Hearings Regulations leave everything to the discretion of the committee. They regulate nothing. They should be revoked.***

231. ***The section 182 Guidance should indicate the degree of formality required, the structure of hearings, and the order in which the parties should normally speak. It should make clear that parties must be allowed sufficient time to make their representations.***

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209 Written evidence from Gerald Gouriet QC ([LIC0056](#))

210 Supplementary evidence from Professor Roy Light ([LIC0168](#))

211 Written evidence from Gerald Gouriet QC ([LIC0056](#))

212 Supplementary evidence from Professor Roy Light ([LIC0168](#))

## Licensing appeals

### *Delay*

232. Delay before appeals come to a hearing is a perennial problem, as the London Borough of Hounslow explained:

“An appeal is a de novo hearing and when over a year has elapsed from the date of the committee hearing to the date of appeal, this poses serious problems for licensing authorities. If a decision was taken on review to impose restrictions on a licence and then a full year has elapsed, how could it possibly be appropriate and proportionate for the court to impose the same conditions based on something that happened so long ago? We find ourselves in situations where the decision made by the committee was right at the time of the committee hearing but wrong at the time of the appeal. The local authority could then have costs awarded against them for the sole reason that the court system is so slow.”<sup>213</sup>

233. The Mayor of London was also concerned about delay:

“... the Act sets out no timescales for appeal, no statutory procedures to follow and no rules about costs (save the general rule that costs are in the discretion of the magistrates’ court). The upshot of that in London is that appeals can take up to 9 months to get on and up to 10 days to decide, creating costs for appellants and authorities alike which are unsustainable. What should be a check and balance in the Act, available for applicants, licensees, residents or responsible authorities, has become the preserve of those with the resource to see it through. The Act and/or subordinate legislation ought to be amended/created to provide set timescales for appeal processes, and to provide procedures for their expeditious and economic disposal.”<sup>214</sup>

234. We appreciate the problem; delay is a concern not just in the case of licensing appeals, but generally in the court system. A timetable set in subordinate legislation might prioritise licensing appeals, but only at the expense of delays in other magistrates’ court proceedings. Decisions on the order of court hearings must ultimately remain for the court to decide. We hope that sending appeals to planning inspectors may in due course cut down on delays, but in the meantime we see little that can be done.

235. The Mayor was particularly concerned about the consequences of delay where revocation decisions are made on a summary review. There, he told us, the position is that, where suspension has been imposed as an interim step, the premises have to remain closed pending an appeal. “The lapse of time before the appeal is apt to put the licensee wishing to challenge the decision out of business, rendering the appeal futile. In such cases, there ought to be an opportunity for a rapid re-appraisal of the decision at appellate level. This is not currently happening.”<sup>215</sup>

236. ***We recommend that where on a summary review a licence is revoked and the livelihood of the licensee is at stake, magistrates’ courts should list appeals for hearing as soon as they are ready.***

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213 Written evidence from London Borough of Hounslow ([LIC0025](#))

214 Written evidence from Mayor of London ([LIC0173](#))

215 Written evidence from Mayor of London ([LIC0173](#))

*Stay of decision pending appeal*

237. A stay of a decision pending appeal can also cause problems. Where on an application for review a licensing authority orders the revocation of a licence, an appeal will stay the revocation until the appeal is disposed of.<sup>216</sup> This process can be abused. Councillor Richards gave us an example where “the review happened just before the festive period, and they appealed so that they could maintain their licence through the festive period and then proceeded to close their premises”.<sup>217</sup> Bath City Centre Action Group told us of “an example in Bath of a premises which used the appeal process to resist decisions of the licensing authority, and the planning authority, for 10 years. ... None of the substantive appeal issues was upheld and the premises could legally trade in defiance of the local authority’s decisions.”<sup>218</sup>
238. The Home Office told us that “discussions were held between the Home Office, representatives of the licensed trade, licensing solicitors and local government to look at ... whether the Licensing Act 2003 should be amended to bring into effect licensing review decisions immediately. Presently, these do not come into effect until at least 21 days, during which time a person subject to that review decision can make an appeal to a magistrates’ court. While licensing authorities and trade representatives were critical of the length of time appeals can take, there was no appetite to allow such decisions to take effect immediately.”<sup>219</sup>

**Notification of applications**

239. The section 182 Guidance requires licensees to display a statutory notice in local newspapers when they apply for an alcohol licence or significant variations to their existing licence. Our question in the call for evidence asking for suggestions for the simplification of procedure produced a number of requests for the abolition of this rule. Poppleston Allen, a large firm of licensing solicitors, wrote:

“The costs are on average between £200–£400 and anecdotally, out of thousands of applications that we have issued since 2005 we only know of one where a representation was made by a resident as a result of seeing the newspaper advertisement rather than word of mouth or the notice affixed in the premises’ window, or on a nearby lamp-post.”<sup>220</sup>

240. Advertisements in Leeds seem to be even more expensive, as Leeds City Council told us:

“The cost of a newspaper advert has become prohibitively expensive. In Leeds it can cost around £1,000 for an advert in the local newspaper. In order to assist the local businesses, we have found the national daily newspapers to be more affordable and are advising people to obtain quotes from a number of newspapers before placing their order. Removing the requirement to place a newspaper advert would reduce the financial burden on the business, reduce the potential for error and simplify the application process.”

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216 Licensing Act 2003, [section 52\(11\)](#)

217 [Q 29](#) (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council)

218 Written evidence from Bath City Centre Action Group ([LIC0036](#))

219 Written evidence from Home Office ([LIC0155](#))

220 Written evidence from Poppleston Allen ([LIC0105](#))



241. In oral evidence Sarah Newton MP said that “the last time that the Home Office consulted on the advertising regime for licences, there was strong support for adverts in local newspapers. I know that applicants for licences consider that a costly burden, but it enables the community to understand what is going on.”<sup>221</sup> Subsequently she explained that this consultation was under the previous Government, and that the numbers for and against the requirement to advertise in a local paper were about equal.<sup>222</sup>
242. Times have changed; our evidence showed virtually no support for newspaper advertisements. We see no need for continuing with this requirement. ***We recommend that notice of an application should not need to be given by an advertisement in a local paper. Notices should be given predominantly by online notification systems run by the local authority.***
243. However the Minister made the valid point that the system must always be accessible to people who prefer not to go online. ***Local authorities should ensure that blue licensing notices, as for planning applications, should continue to be placed in shop windows and on street lights in prominent positions near the venue which is the subject of the application.***

### Coordination between the Licensing and Planning Systems

244. We gave in Chapter 3<sup>223</sup> an example of the absurdities that can arise when the licensing and planning systems are deliberately kept at arms length, but there were others. It is clear from the evidence we received that there is currently inadequate coordination between licensing and planning. The Bath City Centre Action Group said that “the artificial barriers created by the legislation between planning and licensing should be removed.”<sup>224</sup> The Campaign for Real Ale (CAMRA) thought “better coordination should be encouraged between the planning and licensing regimes, including a statement of how the relationship between the two will work within each council’s Licensing Policy.”<sup>225</sup> The City of Wolverhampton Council wrote: “Currently, the difference between planning and licensing objectives create a fragmented and confusing system racked with inconsistencies.”<sup>226</sup> The NALEO stated: “There needs to be more coherent decision making policy linking planning conditions to licensing applications and decisions. It seems strange that a licence can be granted for more hours that planning permission allows.”
245. In her final supplementary evidence Sarah Newton MP gave examples of where there is already good collaboration between licensing and planning officers:
- “Warrington Borough Council has arranged for its Licensing Enforcement Officers to work alongside Planning Enforcement colleagues to enable them to look at discrepancies between licensing and planning decisions, including those between permitted operating hours.

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221 [Q 225](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

222 Supplementary written evidence from Home Office ([LIC0175](#))

223 Paragraph 119

224 Written evidence from Bath City Centre Action Group ([LIC0036](#))

225 Written evidence from CAMRA ([LIC0121](#))

226 Written evidence from City of Wolverhampton Council ([LIC0095](#))



Licensing Officers have access to the planning database that allows new licensing applications to be screened against planning information and for any arising issues to be discussed and jointly addressed with the applicants. Licensing and planning officers in the London Borough of Bexley work together to ensure consistency between licensing and planning decisions. For example, the licensing authority advises their planning colleagues of all Temporary Event Notices (TENs) they have received to enable planning officers to identify any potential breaches of existing planning conditions.”<sup>227</sup>

We welcome this, and would like to see it become the norm in all local authorities.

246. *Coordination between the licensing and planning systems can and should begin immediately in all local authorities. The section 182 Guidance should be amended to make clear that a licensing committee, far from ignoring any relevant decision already taken by a planning committee, should take it into account and where appropriate follow it; and vice versa.*

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227 Supplementary written evidence from Home Office ([LIC0175](#))

## CHAPTER 6: THE LICENSING OBJECTIVES

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247. The Licensing Act 1964 continued the requirement that an applicant for a licence must show that he was a “fit and proper person” to hold a licence. By contrast, under the 2003 Act the default position is that any person may hold a personal licence for any premises. In the case of a premises licence, section 18 of the Act provides that the licensing authority “must grant the licence in accordance with the application ...”.<sup>228</sup> There are mandatory conditions imposed and other matters to be taken into consideration, but otherwise it is only if representations are made “about the likely effect of the grant of the premises licence on the promotion of the licensing objectives” that the licensing authority, after hearing those representations, may impose further conditions on the grant of the licence, may exclude from its scope some licensing activities, may refuse to specify a person as the designated premises supervisor, or may reject the application altogether.

248. Section 4(1) and (2) of the Act reads:

**“General duties of licensing authorities**

(1) A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

(2) The licensing objectives are—

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.”<sup>229</sup>

249. A comparison with the Scottish Act is instructive. Section 4 of the Licensing (Scotland) Act 2005 has no equivalent to section 4(1) of the 2003 Act, and no reference to “promotion” of the objectives. Section 4(1) of the Scottish Act begins: “For the purposes of this Act the licensing objectives are” followed by a list of the objectives. Section 23 of the Scottish Act provides an exhaustive list of the grounds on which a premises licence may be refused, the most important of which is that “the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives”. “Promotion” of the objectives is not mentioned.<sup>230</sup> In our view the words “promoting the licensing objectives” are misleading. They suggest

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228 See per McCombe J in *R (on the application of Albert Court Residents Association and others) v Westminster City Council* [2010] EWHC 393, where he said: “An applicant who makes the right judgment, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions beyond those consistent with the content of the operating schedule and any mandatory conditions.”

229 These objectives have their origin in paragraph 46 of the White Paper published by the Home Office, *Time for Reform: Proposals for the Modernisation of Our Licensing Laws*, Cm 4696.

230 In a consultation carried out by the Scottish Government in December 2012 <http://www.gov.scot/Resource/0041/00411123.pdf> [accessed 10 March 2017] the Government noted that in a report “Rethinking Alcohol Licensing”, published in September 2011, Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) had argued in favour of requiring Licensing Boards to promote the licensing objectives. This “would ensure that the objectives are promoted each time that the Board exercises its functions under the Act. This would be akin to the position in the Licensing Act 2003 for England and Wales.” The Scottish Government has not however acted on this suggestion.

that a licensee must take positive steps to achieve the objectives, whereas the intention is simply that the granting of a licence will not (to use the Scottish wording) be “inconsistent with” the prevention of crime and disorder etc.

250. **We have received submissions in both written and oral evidence that three further objectives should be added to the four already listed. Our consideration of them is based on our view that the objectives are not a list of matters which it would be desirable to achieve, but simply an exhaustive list of the grounds for refusing an application or imposing conditions. There is therefore no point in including as an objective something which cannot be related back to particular premises.**

### **Health and well-being**

251. Another important difference between section 4(1) of the Scottish Act and section 4(2) of the 2003 Act is that the Scottish Act has an additional objective: “protecting and improving public health”. In our call for evidence we asked whether the existing four licensing objectives were the right ones, and we specifically sought views on whether “the protection of health and wellbeing” should be an additional objective.
252. During the passage of the Policing and Crime Bill through the House, Lord Brooke of Alverthorpe, a member of this Committee, tabled an amendment to insert into section 4(2) of the Act an objective “to promote the health and wellbeing of the locality and local area”.<sup>231</sup> The Government argued against the amendment, as indeed it had against a similar amendment when the Bill was in Committee in the House of Commons.<sup>232</sup> The amendment was withdrawn, and the Bill was therefore not amended.

### *Evidence in support of a public health objective*

253. The suggestion that there should be a public health objective, however phrased, generated a large volume of evidence from a wide variety of sources. The British Medical Association thought this was “vital given that the main drivers of alcohol consumption are affordability and availability: the cheaper alcohol is to buy, and the easier it is to access, the more likely consumers are to purchase and drink it to excess.”<sup>233</sup> Alcohol Focus Scotland contended that “without the inclusion of a health objective, [the four existing objectives] do not go nearly far enough to ensure that licensing decisions promote the best interests of local people and communities, or that they are informed by evidence of the impact of alcohol on the health of those communities.”<sup>234</sup>
254. Alcohol Concern wrote that “the [Local Government Association] has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.”<sup>235</sup> This figure is misleading. The LGA themselves referred us to the research they carried out, on which Alcohol Concern rely. Although the LGA sought the views of all 130 Directors of Public Health in England, only 80 of them (62%) replied. It is 89% of these who said that,

231 HL Deb, 9 November 2016, [cols 1201–1219](#)

232 Public Bill Committee on the Policing and Crime Bill, 12 April 2016, [cols 337–342](#)

233 Written evidence from British Medical Association ([LIC0041](#))

234 Written evidence from Alcohol Focus Scotland ([LIC0127](#))

235 Written evidence from Alcohol Concern ([LIC0085](#))

within their local councils, there was support for a public health objective. The LGA report states:

“Respondents identified that—without this objective—objections were often unenforceable and evidence and insight from public health was not heard (despite local health data being used effectively by Public Health). Respondents highlighted that, given the existing evidence-base around impacts on health and alcohol availability, there is a clear argument for increasing Health’s involvement in licensing decisions and making health a fifth objective of the Act.”<sup>236</sup>

255. Dr Jeanelle de Gruchy, Vice-President, Association of Directors of Public Health, thought that a fifth health objective was “hugely important”, and added: “At the moment, directors of public health as responsible authorities have to use the other objectives, and try to weave arguments on meeting the other objectives, whether it is crime, nuisance or harm to children, when actually what we are very concerned about is harm to health, yet we do not have that objective to argue the case.” But asked how it would work in practice, she replied: “It will enable us to gather data to look at how we can argue the point that granting licences may impact negatively on the health of residents.”<sup>237</sup> This might be a side-effect, but she did not suggest how it might relate to an individual licence application.

*Evidence against a public health objective*

256. Opposition to the addition of a public health objective has come from those who do not see how it could operate in practice. They emphasised the difficulty of associating public health considerations with individual premises and local decision-making. The Association of Convenience Stores submitted that “It would be incredibly challenging for the licensing authority to identify whether an individual premises’ licence or their licensing conditions promote health as a licensing objective. Using local, relevant evidence to consider an individual premises’ licence application or licensing conditions is fundamental to the Licensing Act 2003, and it is not possible to do this in relation to health and wellbeing.”<sup>238</sup>
257. The Mayor of London, again through Philip Kolvin QC, his Night Time Commissioner, wrote:

“While the health effects of alcohol are a matter of concern for society as whole, its incorporation as a licensing objective would give rise to practical difficulties in local decision-making. In what is a mature and highly evolved licensed economy, it would be extremely difficult to demonstrate that one further licensed premises, or the earlier or later opening of one venue, would have an identifiable, let alone measurable, effect on the health of the local population. The pursuit of important health objectives should therefore lie in other policy measures.”<sup>239</sup>

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236 Local Government Association, *LGA Survey: Public Health and the Licensing Process* (January 2016): <http://www.local.gov.uk/documents/10180/11493/research+-+health+-+LGA+survey+-+Public+Health+and+the+Licensing+Process+Findings+2+feb+2016/8758dd6d-da38-4221-b23e-b56790fb6e66> [accessed 10 March 2017]

237 [QQ 103–104](#) (Dr Jeanelle de Gruchy, Vice-President, Association of Directors of Public Health)

238 Written evidence from Association of Convenience Stores ([LIC0086](#))

239 Written evidence from Mayor of London ([LIC0173](#))

258. A number of witnesses commented on the difficulties the public health objective was causing in Scotland. CAMRA quoted from the report of the Scottish Centre for Social Research in 2013 which found that “one of the most consistent findings throughout the three years of the evaluation was that the public health objective was viewed as being especially problematical.” Pinsent Masons, solicitors, said: “The experience of our licensing specialists in Scotland is that it is very difficult to achieve on a premises by premises basis. For example, it results in general objections from NHS representatives which do not relate (indeed cannot) relate to the premises which are the subject of the application.”<sup>240</sup>
259. In supplementary evidence John Gaunt and Partners, who operate on both sides of the border, gave us a lengthy analysis of how the health objective operates in Scotland, and explained: “Health data is usually broken down from Intermediate Data Zones (IDZs) and at a national level ... This evidence when presented is not easily referenced by Board to the application before them; evidence in respect of the other licensing objectives can be much more premises centric.”<sup>241</sup>

### *Our conclusion*

260. All Governments should adopt policies attempting to reduce the harmful consumption of alcohol. The Government has done so for England and Wales, the Scottish Government for Scotland, and in later chapters we note steps which could be taken within the licensing system to take forward this policy. But putting ourselves in the position of a licensing authority having to decide whether to refuse an application, or to impose conditions, we do not believe that the promotion of public health is capable of relating to specific premises and particular licensing applications.
261. ***Promotion of health and well-being is a necessary and desirable objective for an alcohol strategy, but we accept that it is not appropriate as a licensing objective.***

### **Enjoyment of licensable activities**

262. Another suggestion in our call for evidence was: “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?” We inserted this question because it was a point already raised, and not because we expected to receive much evidence in support. Nor did we. A few witnesses thought Statements of Licensing Policy should recognise the importance of this, and some do.<sup>242</sup> But many argued against the addition of an objective on these lines, and virtually none favoured it.

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240 Written evidence from Pinsent Masons LLP ([LIC0074](#))

241 Supplementary written evidence from John Gaunt & Partners ([LIC0171](#))

242 For example, Newham Council say in paragraph 1.4 of their Statement of Licensing Policy 2014: “The Licensing Authority recognises that the licensed entertainment business sector and community licensed facilities in Newham contribute to the local economy and social infrastructure, but that this has to be balanced with the impact of such activities on the licensing objectives. The Licensing Authority wishes to encourage licensees to provide a wide range of entertainment activities throughout their opening hours and to promote live music, dance, theatre etc. for the wider cultural benefit. They are a factor in maintaining a thriving and sustainable community, which is one of the Council’s aims.”



263. The Mayor of London stated:

“The Mayor would support a system that allowed social and cultural benefit to be considered when councillors are making a licensing decision. However, the inclusion of such a licensing objective risks damaging the fundamental structure of the Act and causing practical difficulties in individual cases. In particular, the licensing objectives do not currently require an evaluation to be made of cultural value. A business is currently entitled to a licence providing it will not cause harm, regardless of its cultural value. If, however, cultural value is added as a licensing objective, the lack of cultural value may become a reason to refuse a licence.”<sup>243</sup> Westminster City Council pointed out in their written evidence that the addition of positive objectives for the “promotion of economic or cultural activities” would risk leading to “more legal challenges and increased cost of decision making to the taxpayer, as a result of tension between newly competing objectives.”<sup>244</sup>

264. During the Committee stage of the Policing and Crime Bill an amendment was moved by Lord Clement-Jones to insert “the promotion of cultural activity and inclusion” as a new licensing objective.<sup>245</sup> The Government opposed the amendment and he withdrew it, but on Report he moved to insert as an objective “the provision of social or cultural activities”. Again, the Government opposed the amendment and it was withdrawn.<sup>246</sup>

265. We see no way in which a failure to promote enjoyment or culture could be measured, let alone ascribed to particular premises for which a licence was being sought. ***We do not recommend that “enjoyment of licensable activities”, “the provision of social or cultural activities”, or anything similar, should be added as a licensing objective.***

### **Access to licensed premises for disabled people**

266. In the 2015–16 Session of Parliament this House set up a Committee to carry out post-legislative scrutiny of the impact of the Equality Act 2010 on disabled people. Premises to which the public have access are required to make “reasonable adjustments” to enable disabled people to access the premises and, once they have accessed them, to enjoy them as fully as anyone, which might for example entail the installation of disabled toilets. A recurrent theme before that Committee was that when disabled people have difficulty accessing premises, or have problems within the premises, which could be cured by reasonable adjustments but are not, it is left to the disabled person to take action and ultimately to bring proceedings to obtain from the county court an order requiring the reasonable adjustments to be made.

267. This remedy is adequate in theory, but in practice disabled people are often less well placed than others to bring such proceedings which, for any private individual, are daunting and can be costly. Disabled litigants like Doug Paulley, who has successfully won his appeal to the Supreme Court in his action against First Group about access to a bus, are an exception.<sup>247</sup> The Select Committee on the Equality Act 2010 and Disability therefore looked

243 Written evidence from Mayor of London ([LIC0173](#))

244 Written evidence from Westminster City Council ([LIC0090](#))

245 HL Deb, 9 November 2016, [cols 1201–1219](#)

246 HL Deb, 7 December 2016, [cols 780–785](#)

247 *FirstGroup Plc v Paulley* (18 January 2017) [UKSC 4](#)



for other ways in which a failure to carry out reasonable adjustments might be rectified without putting the burden on the disabled person.

268. One way suggested to them by Marie-Claire Frankie, a licensing solicitor at Sheffield, speaking on behalf of the National Association of Licensing and Enforcement Officers, was that: “If there was an additional objective relating to equality, there would be a mechanism to get it [disabled access] before a [licensing] committee.”<sup>248</sup> A failure to carry out reasonable adjustments is a failure to comply with the Equality Act, and the insertion of this objective would enable a licensing authority to refuse a premises licence until the adjustments were carried out, or to grant it subject to the condition that they should be carried out. The Committee accepted this suggestion, and recommended that the Government should add to the Act a licensing objective to this effect.<sup>249</sup> They did not anticipate that it would often be necessary for a licensing committee to rely on this provision; just the threat that this could be done would usually encourage the applicant to carry out the adjustments.
269. Unlike the two other proposed objectives we have considered, there would be no difficulty about relating this objective to particular premises, so that there could be no objection to it on that ground. We did not ask in our call for evidence whether there should be an additional objective relating to disability, but in oral evidence we sought the views of some of our witnesses. Many seemed to find it difficult to understand the reason for what was proposed. They thought that the insertion of this objective would duplicate the Equality Act 2010 which, they pointed out, already applied to such licensees.<sup>250</sup> The addition of such an objective, far from duplicating the Equality Act, would be a way of compelling licensees to comply with it.
270. At the Committee stage of the Policing and Crime Bill Baroness Deech, the Chairman of the Select Committee on the Equality Act 2010 and Disability, together with other members of that Committee, moved an amendment to add as a licensing objective “compliance with the Equality Act 2010”. In the debate it was pointed out that logically it would be equally appropriate to use the Licensing Act to ensure compliance with other legislation.<sup>251</sup> Accordingly Baroness Deech withdrew her amendment, and tabled on Report the addition of the narrower objective “securing accessibility for disabled persons”. This too was opposed by the Government on the ground that:

“this amendment is seeking to skew the regulatory regime in the 2003 Act and use it for a purpose for which it was never intended. The amendment potentially puts us on to a slippery slope. If we can use the 2003 Act to enforce the obligations placed on businesses by other enactments, where does this stop? Are licensing authorities then to be charged with, for example, ensuring that pubs and restaurants are paying the minimum wage or complying with other aspects of employment law?”

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248 Oral evidence taken before the Select Committee on the Equality Act 2010 and Disability, 1 December 2015 (Session 2015–16), [Q 154](#). Ms Frankie also gave evidence to us on 6 September 2016.

249 Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: the impact on disabled people* (Report of Session 2015–16, HL Paper 117), paragraphs 465–473

250 For example, [Q 55](#) (Daniel Davies, National Chairman, Institute of Licensing and John Miley, National Chair, National Association of Licensing and Enforcement Officers)

251 HL Deb, 9 November 2016, [cols 1201–1219](#)

Baroness Deech put this to a vote, but the amendment was lost by 177 votes to 135.<sup>252</sup>

271. We wholly support the purpose of this amendment. Anything which can be done to make it easier for disabled people to enjoy fully the amenities most of us take for granted is to be welcomed. But we reluctantly accept the force of the Government's argument. It would stretch the Act too far to allow it to be used as a mechanism for general enforcement of legislation which applies to licensed premises.
272. ***We do not recommend adding as a licensing objective "compliance with the Equality Act 2010" or "securing accessibility for disabled persons".***

### **Disabled access: an alternative**

273. For an alternative way of helping disabled people to access licensed premises, we turn again to Scottish law. Section 20(2) of the Licensing (Scotland) Act 2005 sets out a list of the documents which must accompany an application for a premises licence. Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 adds to that list "a disabled access and facilities statement." This is a statement which must contain information about:

"(a) provision made for access to the subject premises by disabled persons,

(b) facilities provided on the subject premises for use by disabled persons, and

(c) any other provision made on or in connection with the subject premises for disabled persons."

274. Without a disabled access and facilities statement an application would be incomplete and so rejected. There is no express provision as to what the position would be if the statement was included but unsatisfactory, but presumably it would be possible at least to attach conditions to the licence. Section 179 of the 2010 Act has not however been brought into force<sup>253</sup> so these provisions do not yet apply.
275. We asked Sarah Newton MP whether a similar provision should be introduced in England and Wales. She replied:

"I understand that when this was debated in the House of Lords the approach taken was to seek a voluntary agreement with the industry. That was felt to be a more sustainable and effective way forward. I have followed it up. I have noticed that new codes have come into effect and that licensed premises have taken this very much on board as something that they want and need to do. That is the best approach ..."<sup>254</sup>

We find this a remarkably complacent approach. The provision on reasonable adjustments, now in the Equality Act 2010, was introduced by the Disability

252 HL Deb, 7 December 2016, [cols 785–795](#)

253 A spokeswoman for the Scottish Government has said that "The expected timeframe is by the end of this Parliament", which could be as late as 2021.

254 [Q 214](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

Discrimination Act 1995. Any premises which have yet to comply with that provision are unlikely to be influenced by a voluntary code.

276. The minister added: "... if new measures are introduced in Scotland, we will see how those go. If there is a review of them and there is good evidence that they were useful in making progress, of course we will consider them." This is the same approach as with minimum unit pricing: a provision is on the statute book in Scotland, it is not in force, and the Government prefers to let Scotland make the running and take the risk. But in this case there is no risk. The provision by licensees of disabled access facilities does not impose on them a new obligation or financial burden, since this is no more than what they are already required to do by law. This requirement is a simple way of enforcing the law and ensuring that licensees comply with it.<sup>255</sup>
277. *We recommend that the law should be amended to require, as in Scotland, that an application for a premises licence should be accompanied by a disabled access and facilities statement.*

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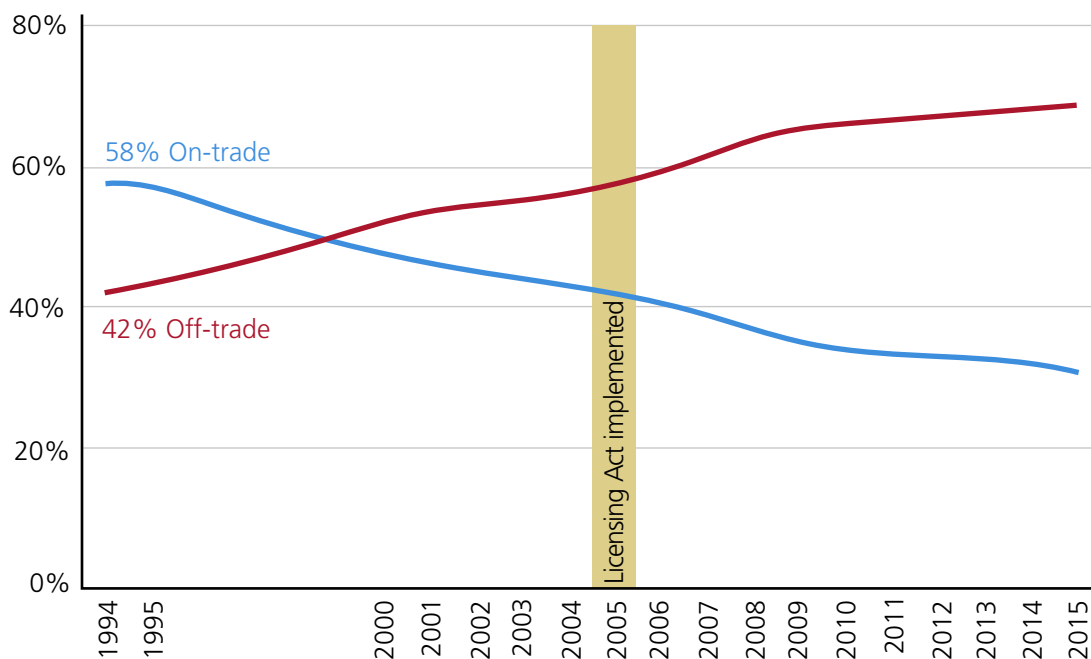
255 *Ibid.*

## CHAPTER 7: THE OFF-TRADE

### Introduction

278. The Licensing Act 2003 was enacted at a time of high profile problems related to on-trade sales, such as aggressive drinks promotions, which linked the on-trade with public concerns surrounding ‘binge drinking’. In 2005, the year in which the Licensing Act 2003 came into force, the majority of beer sales still took place in the on-trade. Even then though, the overall balance in alcohol sales was already shifting decisively in favour of the off-trade, which represented 58% of all alcohol sold, with the on-trade making up the other 42%. By 2015, when more beer was sold off-trade than on-trade for the first time, the quantity of all alcohol sold in the off-trade dwarfed that of the on-trade, by 69% to 31% respectively.

**Figure 4: Volume of pure alcohol sold in England & Wales: proportion sold through the on-trade and off-trade, 1994–2015**



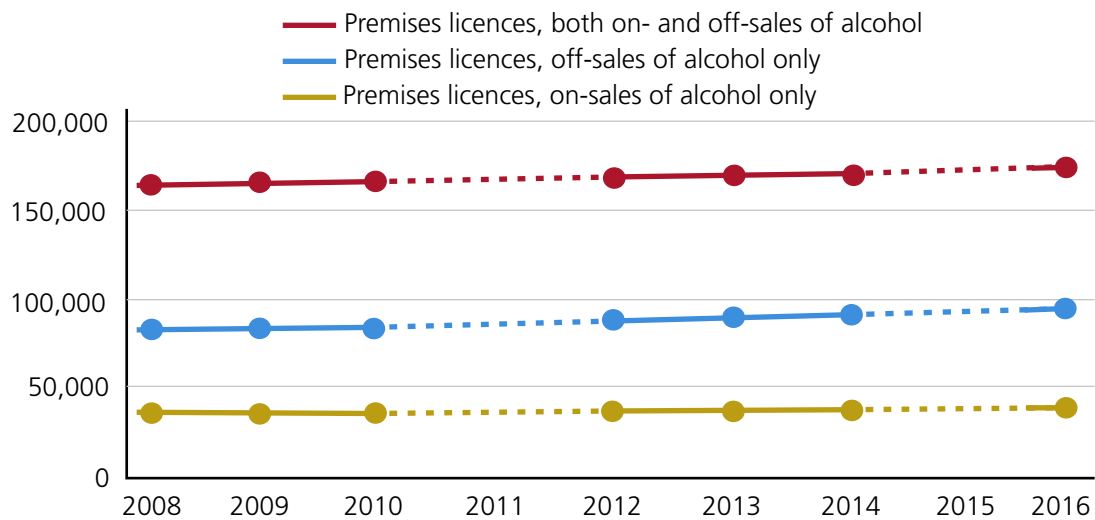
Source: NHS Health Scotland, ‘Alcohol retail sales dataset 1994 to 2015’ (May 2016): <http://www.healthscotland.scot/media/1203/27345-01-alcohol-retail-sales-dataset-1994-to-2015-may-2016.xls> [accessed 10 March 2017]

279. As at March 2016, of the 174,400 premises licensed to serve alcohol in England and Wales, 38,600 were licensed only for on-sales, 55,700 were licensed only for off-sales, and 80,100 were licensed for both on- and off-sales of alcohol.<sup>256</sup> The number of off-trade only premises has increased

<sup>256</sup> Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

by 30% in the past 30 years.<sup>257</sup> The increase in off-trade premises partially reflects a shift away from larger, out of town supermarkets, towards smaller, more numerous local or express branches of supermarkets in town centres over this period.<sup>258</sup>

**Figure 5: Premises Licences by Type, 2008–2016**



Source: Home Office, 'Alcohol and late night refreshment licensing England and Wales' (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 12 January 2017]

280. We received much evidence from those who argued that regulation needs to be adjusted to reflect this shift in the market, with more restrictions placed on off-trade premises. The basis for these arguments was that on-trade premises provided supervised places for the consumption of alcohol, and often, in the shape of community pubs and venues, possessed intrinsic cultural value; elements which off-trade premises lacked. Prices in off-trade premises are also on average significantly cheaper than in on-trade premises, which many respondents argued was encouraging people to drink more.<sup>259</sup>

281. A number of public health experts also highlighted the steady shift from on-trade sales to off-trade sales. Professor Sir Ian Gilmore of the Alcohol Health Alliance observed that the UK had become a "home-drinking nation" in the last 10 to 20 years.<sup>260</sup> Professor Colin Drummond explained that those who are "very heavy drinkers and are alcohol dependent tend not to drink in pubs; they would not be able to afford to do that for the amount they consume, so they get their alcohol from off-sales. They tend to trade down

257 DCMS, 'Aggregate tables from bulletin', Liquor Licensing Statistics Historical Time Series (11 January 2011): <https://www.gov.uk/government/statistics/alcohol-entertainment-and-late-night-refreshment-licensing-england-and-wales-april-2009-to-march-2010> [accessed 10 March 2017];

Home Office, 'Alcohol and late night refreshment licensing England and Wales' (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016> [accessed 10 March 2017]

258 Written evidence from Balance North East Alcohol Office (LIC0023)

259 For example, written evidence from Alcohol Concern (LIC0085), Alcohol Health Alliance UK (LIC0078), Alcohol Research UK (LIC0022), Association of Directors of Public Health (LIC0064)

260 Q 108 (Prof Sir Ian Gilmore, Chair, Alcohol Health Alliance)



in the cost of the products they choose”.<sup>261</sup> However, others, such as Nick Grant, Head of Legal Services for Sainsbury’s, argued that the use of terms such as “home drinking”, were unhelpful and pejorative: “It implies a whole set of images about what it means, but the last time I had a dinner party with a bottle of wine, or there was a barbecue, I did not regard myself as home drinking. We have to be wary of overloaded terms.”<sup>262</sup>

282. Within some parts of the on-trade industry there was a perception that the smoking ban, which came into force in England and Wales in 2007, had been one of the biggest factors driving the shift in custom from the on-trade to the off-trade. George Dawson, President of the Working Men’s Club and Union Institute, told us that for clubs, “the biggest decline [in trade] ... was when the smoking ban came in.”<sup>263</sup> The Association of Licensed Multiple Retailers and Admiral Taverns also pointed to the smoking ban as a major factor in the decline of the on-trade and the corresponding rise in the off-trade.<sup>264</sup>
283. The sale of alcohol online is a further emerging development in the world of off-trade sales. We heard evidence suggesting that verifying the age of purchasers of alcohol online, both from supermarket chains with online sales and from more specialist online retailers, could be challenging.<sup>265</sup> Some respondents expressed uncertainty about the legal position when, for example, an individual under the age of 18 took receipt of a mixed delivery of shopping which included alcohol on behalf of their parents, who legally purchased the alcohol.<sup>266</sup> However, it appears that supermarkets, especially the larger operators such as Sainsbury’s and Ocado, have sensible policies in place, such as age-verification at the door and the withholding of alcoholic products or entire deliveries if this is failed.<sup>267</sup> While we do not believe this is currently a substantial problem, online deliveries will only increase, and online sales and delivery of alcohol should be closely monitored in future.

### *Pre-loading*

284. There was also much discussion concerning the apparent rise in pre-loading, where individuals consume cheaper off-licence alcohol at home, before continuing on to on-licence premises. The nature and extent of the problem remains unclear. Some, such as the Association of Licensed Multiple Retailers (which represents on-licence premises), claimed that surveys of 3,000 18–24 year olds, covering a period from 2009/10–2011/12, demonstrated that “the prevalence of pre-loading has increased significantly over the last three years, with 83% of 18–24 year olds admitting to pre-loading on supermarket alcohol”, up from just 53% in 2009.<sup>268</sup> The Association of Convenience

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261 [Q 108](#) (Prof Colin Drummond, Chair of the Faculty of Addictions Psychiatry, Royal College of Psychiatrists)

262 [Q 158](#) (Nick Grant, Head of Legal Services, Sainsbury’s Supermarket Ltd)

263 [Q 172](#) (George Dawson, Union President, Working Men’s Club and Institute Union)

264 Written evidence from ALMR ([LIC0150](#)) and Admiral Taverns ([LIC0124](#))

265 Written evidence from Citizens Advice Westminster ([LIC0132](#)), Alcohol Health Alliance UK ([LIC0078](#)) and Middlesbrough Council ([LIC0073](#))

266 Written evidence from Cambridge City Council ([LIC0108](#)), Central England Trading Standards ([LIC0021](#)) and [Q 58](#) (John Miley, National Chair, National Association of Licensing and Enforcement Officers)

267 [Q 159](#) (Nick Grant Head of Legal Services, Sainsbury’s Supermarket Ltd) and [Q 160](#) (Mark Bentley, Customer Operations Director, Ocado)

268 Written evidence from the Association of Licensed Multiple Retailers ([LIC0150](#)). The provenance of this data is, however, difficult to trace, and appears to date from 2013, based on a very similar submission by the ALMR to Newcastle City Council as part of a late night levy consultation.

Stores on the other hand pointed to a different poll conducted by YouGov in 2015, which suggested that only 35% of the 2,000 adults polled had pre-loaded in the previous year, and that of those, 42% said that the alcohol they consumed before a night out was only a small proportion of the alcohol they drank that same night.<sup>269</sup>

285. When appearing before the Committee, the Home Office initially claimed to be unaware of any evidence relating to pre-loading. However, in supplementary evidence they provided us with some details of two studies on the subject. They explained that:

“One study involved a group of young men between 17-30 years old that had been arrested in an unnamed city in England. Around two-thirds of the group claimed to have ‘pre-loaded’ before a night out. A second study found that individuals who had ‘pre-loaded’ were around two-and-a-half times more likely to be involved in violent incidents than other drinkers.”<sup>270</sup>

However, they were also keen to emphasise that the “extent of the research is limited and cannot be generalised to the wider population, and will need to be read within the context of reduced consumption of alcohol, particularly among young people, changes in the balance of alcohol purchased in the off- and on-trades, and falls in alcohol-related violence.”<sup>271</sup>

286. There was also disagreement among witnesses as to whether pre-loading was causing serious problems. A number of respondents, including Alcohol Concern, the British Hospitality Association and Plymouth City Council linked pre-loading with increased alcohol-related crime and disorder on Britain’s streets.<sup>272</sup>
287. However, others, generally representing off-trade businesses, argued that there was very little hard evidence to suggest that pre-loading was a serious problem. For example, James Brodhurst-Brown, representing Waitrose, claimed he had “seen no evidence to suggest that pre-loading is actually an issue”, and noted that ‘home drinking’ had become “standard for anybody who buys something to drink before they go out”, irrespective of whether this was indeed a problem at all.<sup>273</sup> Nick Grant, Head of Legal Services at Sainsbury’s, and Gill Sherratt, director of Licensing Matters, expressed similar opinions.<sup>274</sup>
288. Representatives of the off-trade expressed the view that, beyond education, there was little that could meaningfully be done to regulate how people consumed alcohol purchased from off-trade premises. Other witnesses we heard from did however make a number of suggestions. The most common suggested interventions included:

- ‘super-strength’ schemes currently in use by some local authorities around the country;

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269 Written evidence from Association of Convenience Stores ([LIC0086](#))

270 Supplementary written evidence from Home Office ([LIC0063](#))

271 Supplementary written evidence from Home Office ([LIC0063](#))

272 Written evidence from Bath City Centre Action Group ([LIC0036](#)); British Hospitality Association ([LIC0149](#)); Ealing Civic Society ([LIC0129](#)); Plymouth City Council ([LIC0048](#)); Alcohol Concern ([LIC0085](#)); Alcohol Health Alliance UK ([LIC0078](#))

273 [Q 159](#) (James Brodhurst-Brown, Manager, Regulatory Affairs and Trading Law, Waitrose)

274 [Q 159](#) (Nick Grant, Head of Legal Services, Sainsbury’s Supermarkets Ltd); [Q 65](#) (Gill Sherratt, Director, Licensing Matters)

- the introduction of new Group Review Intervention Powers, allowing local authorities to introduce mandatory conditions for all premises in a particular area;
- the introduction of new mandatory conditions for off-trade premises modelled on the Alcohol etc. (Scotland) Act 2010.

In the following paragraphs we examine each of these proposals in turn.

### Super-strength schemes

289. We heard a great deal about ‘super-strength’ alcohol, and the schemes developed by both central government and some local authorities to try to reduce its availability. The term is most commonly used to describe alcoholic drinks which are both high-strength and low cost. While the definition of ‘high-strength’ alcohol varies, it normally encompasses very cheap beers and white ciders of 6.5% alcohol by volume (ABV) and above, and in particular those of 8–9% ABV, where a single 500ml can of beer may contain over four units of alcohol.<sup>275</sup> It is not uncommon to find three litre bottles of 7.5% ABV cider being sold for £3.50, which is slightly over 15p a unit, while 500ml cans of 8% ABV beer are often sold for £1.45 to £1.79, equating to 36p and 44p a unit respectively.<sup>276</sup> Many respondents who discussed super-strength alcohol were however careful to distinguish these products from specialist craft and Belgian beers, which tend to be sold at a significantly higher price.<sup>277</sup>
290. The Local Government Association (LGA) defines a street drinker as an individual “who drinks heavily in public places and, at least in the short term, is unable or unwilling to control or stop their drinking, has a history of alcohol misuse and often drinks in groups for companionship”. The LGA also claims that street drinkers are associated with an increased risk of causing harm to themselves or others, homelessness, and may be involved in begging and rowdy drunken behaviour.<sup>278</sup> The health problems associated with super-strength alcohol are those associated with serious alcohol dependency. These include liver disease, as well as conditions such as Korsakoff Syndrome, a form of alcohol-related brain damage.<sup>279</sup>
291. We heard evidence from many respondents who linked super-strength alcohol, which is almost exclusively sold at off-trade rather than on-trade premises, to problems of anti-social behaviour and street drinking in their areas. Lambeth Borough Council explained that “in boroughs like ours we have problems with street drinkers and we find it difficult to prove that one premises is particularly responsible, yet the activities of street drinkers are directly linked to anti-social behaviour and often crime and disorder.”<sup>280</sup> Paddington Waterways and Maida Vale Society similarly linked street drinking in their area to “the purchase of super strength alcohol, and

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275 Written evidence from Medway Public Health ([LIC0066](#))

276 *Ibid.*

277 Written evidence from Broxtowe Borough Council ([LIC0138](#)); National Association of Licensing and Enforcement Officers ([LIC0148](#)); TLT Solicitors ([LIC0112](#))

278 LGA, *Reducing the Strength: Guidance for councils considering setting up a scheme* (January 2016): [http://www.local.gov.uk/documents/10180/5854661/L14350+Reducing+the+Strength\\_16.pdf/bbbb642e-2bcb-47d4-8bea-2f322100b711](http://www.local.gov.uk/documents/10180/5854661/L14350+Reducing+the+Strength_16.pdf/bbbb642e-2bcb-47d4-8bea-2f322100b711) [accessed 10 March 2017]

279 Alcohol Concern, *All in the Mind: Meeting the challenge of alcohol-related brain damage* (March 2014): available at: <https://www.alcoholconcern.org.uk/all-in-the-mind> [accessed 10 March 2017]

280 Written evidence from London Borough of Lambeth ([LIC0134](#))

the associated problems of litter, public urination and general anti-social behaviour”.<sup>281</sup>

292. Medway Public Health explained that, based on interviews with owners of smaller off-trade premises, the sale of super-strength products “is vital to their business model, and it is not unknown for shops to close when they stop selling these products as they cannot make a profit without these sales”. Many of these shopkeepers “feel they have no choice but to stock super strength beers and ciders due to market forces, as so many of their competitors stock them and their businesses are so reliant on the profit from the sales”, despite “knowing they are selling to people who are alcohol dependent”.<sup>282</sup>

### *Responsibility Deal*

293. The Coalition Government sought to reduce the availability of some forms of super-strength alcohol through its Public Health Responsibility Deal, first launched in March 2011. This consisted of a voluntary code of conduct which both manufacturers and retailers were encouraged to pledge support for. The earliest version contained a pledge to reduce the strength of alcoholic products in general, while a revised deal in 2014 included a Responsible Can Packaging Pledge. This included a pledge that read:

“To support our pledge to remove a billion units of alcohol sold annually from the market, we will carry out a review of the alcohol content and container sizes of all alcohol products in our portfolio. By December 2014 we will not produce or sell any carbonated product with more than 4 units of alcohol in a single-serve can.”<sup>283</sup>

294. However, according to the Department of Health’s Responsibility Deal website, only eight companies signed up to this.<sup>284</sup> Of these, only three were manufacturers rather than retailers. Of the three manufacturers who signed up, SABMiller plc claimed they did not sell any cans containing four or more units of alcohol, even before the introduction of the Pledge. AB InBev UK, despite noting that they did not “believe that targeting individual products will tackle problem drinking”, agreed to withdraw their 9% ABV 500ml can of Tennent’s Super Lager by the end of 2015.<sup>285</sup> Carlsberg, while agreeing to reducing the strength of its Special Brew cans of lager, shortly after appeared to withdraw from their pledge, on grounds reproduced in Box 5. There appear to have been no further updates or commitments since 28 January 2015.

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281 Written evidence from Paddington Waterways and Maida Vale Society ([LIC0144](#))

282 Written evidence from Medway Public Health ([LIC0066](#))

283 Department of Health, ‘A8(b). Responsible can packaging’: <https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=54> [accessed 10 March 2017]

284 Department of Health, ‘Carlsberg UK Ltd’: <https://responsibilitydeal.dh.gov.uk/annualupdates/?au=4651> [accessed 10 March 2017]

285 Although they did not produce any further updates for the Responsibility Deal, Tennent’s Super Lager is no longer available from UK retailers.

**Box 5: Carlsberg's 30 April 2015 update on its Responsibility Deal Pledge**

“At the end of 2011, in an effort to demonstrate our own commitment and leadership on responsible drinking, we committed to reviewing our portfolio in order to not sell any carbonated product containing more than four units of alcohol in a single-serve can. Our commitment is to implement this across our portfolio during 2015 and this process is now underway.

This commitment was made with the intent that key stakeholders recognise the change, and that these products should now be seen as ‘socially responsible’. This has yet failed to materialise and any further delivery, over and above our initial commitment, will remain subject to that recognition and that local regulators cease in banning these products following implementation of the changes being made.”

Source: Department of Health, ‘Public Health Responsibility Deal: Carlsberg UK Ltd’ (30 April 2015): <https://responsibilitydeal.dh.gov.uk/annualupdates/?au=4651> [accessed 15 March 2017]

295. It should also be noted that, as a result of the pledge’s focus on cans, large multi-litre bottles of strong cider were excluded. As Leeds City Council pointed out to us, many of the most pernicious problems with super-strength alcohol come in the form of large bottles of high-strength white cider, with a three litre bottle containing around 22 units of alcohol and costing around £3.50.<sup>286</sup> They note that “anecdotal evidence from people in treatment services informs us that once they remove the top of the bottle, they will drink it all, despite their best intentions”.
296. In their view it was “a misconception that restricting the ability to sell single cans will stop dependent drinkers from buying alcohol”. They highlighted the fact that at least “the sale of single cans means that a dependent drinker can self-dose the alcohol they need to consume to keep them from becoming ill, without putting temptation in front of them to drink more than they need to”. In their view it is important that “any restriction on alcohol is designed in such a way to assist rather than hinder people’s ability to overcome their addiction”, and they and some others suggested focusing on pack size—especially larger three litre bottles of white cider—rather than on ABV.<sup>287</sup>
297. The overall assessment of the Coalition Government’s Responsibility Deal among our respondents was not positive. While the LGA welcomed “the decision of some producers who have voluntarily withdrawn these products from the market after seeing the harm that they can cause”,<sup>288</sup> most appeared unaware that such a scheme had ever even existed.<sup>289</sup> The Police and Crime Commissioner for Devon and Cornwall argued it had had “little impact”, had only “limited take up”, and that the four-unit limit per can “does not affect most of the current products considered to be ‘very high strength’”.<sup>290</sup>

*Local schemes*

298. With the lacklustre success of central government approaches towards super-strength alcohol, many local authorities have devised policies of their own.

286 Written evidence from Leeds City Council ([LIC0034](#))

287 *Ibid.*

288 Written evidence from LGA ([LIC0099](#))

289 At least two respondents believed a voluntary scheme for encouraging manufacturers to withdraw super-strength products should be introduced, apparently unaware of the Responsibility Deal.

290 Written evidence from the Office of the Police and Crime Commissioner for Devon and Cornwall ([LIC0153](#))



‘Super-strength’ schemes or ‘Reducing the Strength’ schemes refer to local authority approaches which attempt to establish voluntary agreement from all off-trade premises in a particular area not to stock super-strength products.

299. The first example of a super-strength scheme was in Suffolk in 2012, and since then between 25 and 100 local authorities have introduced their own.<sup>291</sup> These are, according to the LGA, “of varying degrees of formality and complexity; conditions are also used to address this on individual applications where appropriate”. However, the LGA emphasises that they predominantly “rely on retailers accepting the evidence that specific products are linked to alcohol-related harm and voluntarily withdrawing those products”, and that retailers have “the right not to participate in a voluntary scheme”.<sup>292</sup> However, evidence we have received does show that many local authorities have adopted stricter approaches, as can be seen in Box 6.

### **Box 6: Examples of super-strength schemes currently in operation**

- Bedford City Council: beers and ciders with an ABV of above 6.5% cannot be sold in any off-licences in the restricted alcohol zone in the city centre; further licensing conditions restrict the sale of beers or ciders above 5.5% ABV, considered to be ‘super strength’.
- City of London Council: reserves the right to impose conditions to restrict the sale of beer and cider above 5.5% ABV, and to restrict the sale of single cans or bottles of beer.
- Worthing and Adur Councils: reserve a right to impose conditions on new applications when requested by police to restrict the sale of any beers, lagers or ciders over 6% ABV.
- London Borough of Islington: runs a best practice scheme which involves off-licences committing to not selling beer and ciders above 6.5% ABV. Membership of the best practice schemes can qualify premises for a 30% reduction on the Borough’s Late Night Levy annual fee.

Source: *Written evidence from CAMRA (LIC0121)*

300. A number of witnesses wanted broader powers to impose bans across several premises simultaneously. Cornwall Council’s Licensing Authority, for example, claimed that they sometimes experienced “problems with national chains being reluctant to join a voluntary scheme”, and therefore wanted powers for licensing authorities to be able to “bring in an Order in areas where it is necessary to make this mandatory rather than voluntary”.<sup>293</sup> They suggested these powers could be linked to Cumulative Impact Policies (CIPs) (see Chapter 9), although their proposal would also be met by proposed Group Review Intervention Powers (GRIPs) (considered later in this chapter).
301. The Institute of Licensing noted that “there is a feeling amongst some that this is an area which would benefit from central rather than local control”, and indeed, a number of local authorities wanted a complete ban on super-strength alcohol, rather than the strengthening of powers to be used on a local

<sup>291</sup> It remains unclear why there should be such a wide range of estimates; the Local Government Association believes there to be 25–30 schemes currently in operation, whereas the Society for Independent Brewers cited a much higher number of 100.

<sup>292</sup> Written evidence from LGA (LIC0099)

<sup>293</sup> Written evidence from Cornwall Council Licensing Authority (LIC0069)

level.<sup>294</sup> Ashford Borough Council similarly believed “in order to prevent further complexity to the Act that these controls need to be implemented nationally”. This could, they believed, work best as a “national standard that may be adopted by Local Authorities where they consider this applicable to their area”.<sup>295</sup>

302. However, there was also much criticism of super-strength schemes, concerning both their current operation, and the possibility of putting them on a statutory footing, or attempting to ban all forms of super-strength, low-cost alcohol.
303. Both CAMRA and the Society for Independent Brewers (SIBA) opposed super-strength schemes on principle, arguing that they restricted consumer choice and did not address the real issues. CAMRA claimed it was “discriminatory that higher strength cider and beer products are subject to local bans when no issue has been taken with the sale of low cost spirits and wines, which are far higher in alcoholic strength”. They were particularly opposed to the use of “mandatory licensing conditions which set a very low ABV% point to be considered super strength”, on the grounds that this can “severely impact on consumer choice”. SIBA argued a similar point, and in their view “it is quite wrong that these bans typically apply only to beer and cider and not to wine and spirits, despite their higher strength”.<sup>296</sup>
304. Scarborough Borough Council Licensing Committee argued it was “fatuous to suggest that there should be control over “super strength” alcohol because it will not address the issue”, pointing to “very strong French and Belgian Trappist beers that have been brewed at 7% to over 9% for a few hundred years”, and have not caused problems with street drinking or pre-loading, yet might well be caught out by new legislation.<sup>297</sup>
305. A number of respondents also noted that existing schemes could often be legally questionable, as efforts by local councils to collectively coordinate the withdrawal of particular products from the market could lead retailers to fall foul of competition law. The Association of Convenience Stores told us that they advise their members “to assess each individual scheme on its merits and be mindful of certain practices that put them in breach of competition law, or because they are unconvinced that the schemes are tackling street drinking in an effective and holistic way supported by strong evidence”.<sup>298</sup> Alcohol Research UK also noted that any attempt to introduce statutory restrictions on the sale of super-strength alcohol would “require legislation that avoided challenges on the ground of restricting competition” which they believe would be difficult to achieve “given the stringent limitations set out by the Competition and Markets Authority”.<sup>299</sup>
306. Indeed, the LGA’s “Reducing the Strength” guidance makes clear that while local councils are themselves unlikely to fall foul of competition law, local retailers who co-operate are at risk, and warns that “they must, therefore, ensure that they are not engaging in anticompetitive behaviour otherwise they could face significant penalties, including significant fines”.<sup>300</sup> They

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294 Written evidence from Institute of Licensing ([LIC0126](#))

295 Written evidence from Ashford Borough Council ([LIC0016](#))

296 Written evidence from Society of Independent Brewers ([LIC0093](#))

297 Written evidence from Scarborough Borough Council Licensing Committee ([LIC0145](#))

298 Written evidence from Association of Convenience Stores ([LIC0086](#))

299 Written evidence from Alcohol Research UK ([LIC0022](#))

300 LGA, *Reducing the Strength: Guidance for councils considering setting up a scheme* (January 2016): [http://www.local.gov.uk/documents/10180/5854661/L14350+Reducing+the+Strength\\_16.pdf/bbbb642e-2bcb-47d4-8bea-2f322100b711](http://www.local.gov.uk/documents/10180/5854661/L14350+Reducing+the+Strength_16.pdf/bbbb642e-2bcb-47d4-8bea-2f322100b711) [accessed 10 March 2017]

emphasise to councils that “the easiest way to avoid this risk is to engage bilaterally with individual retailers, rather than with groups of retailers together” so as to ensure that sensitive commercial information is not discussed between competitors. However, it is not difficult to see why retailers would not be reassured by this guidance.

307. Even some local councils who used voluntary schemes were not keen that they be placed on a statutory footing. Broxtowe Borough Council, for example, argued that “local schemes are more effective and are better able to target the offending products”, and that more formal mandatory controls risked catching out specialist craft ales and beers.<sup>301</sup>

308. In their evidence to us, the Home Office noted the need for a holistic approach to super-strength products, which put as much emphasis on treatment as it did on restricting access to particular products. They said:

“... banning these products alone may not be effective and individuals may resort to other, more harmful products. Examples from some areas in England and Wales, most notably in Ipswich, have shown that other measures, such as getting individuals into treatment to address their alcohol dependency are as important as removing ‘super-strength’ products from sale as treatment seeks to change the behaviour driving the dependency. The Government continues to encourage local authorities to provide effective alcohol-treatment services in order to respond effectively to the needs of those with alcohol dependency problems”.<sup>302</sup>

309. We have heard evidence suggesting that some super-strength schemes pursued at a local authority level and targeted at retailers have worked. However, the effectiveness of this approach remains largely unproven. *We do not recommend that powers to ban super-strength alcohol across many premises simultaneously be granted to local authorities.*

310. **The Coalition Government’s Responsibility Deal on alcohol did not achieve its objectives, and appears to have been suspended. We believe much more still needs to be done to tackle the production of super-strength, low-cost alcoholic products. If and when any similar schemes are developed in the future, there must be greater provision for monitoring and maintaining them, and greater collaboration between all parties involved, including both public health experts and manufacturers. They should also account for the realities of super-strength alcohol, with particular focus on, for example, ABV rather than the specificities of packaging.**

### Group Review Intervention Powers (GRIPs)

311. Group Review Intervention Powers, as proposed in the Government’s Modern Crime Prevention Strategy of March 2016, would “enable licensing authorities to consider the licensing conditions of a group of premises to address problems in a specific location”.<sup>303</sup> Detailed plans as to how these would work have yet to be released.

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301 Written evidence from Broxtowe Borough Council ([LIC0138](#))

302 Written evidence from Home Office ([LIC0155](#))

303 Home Office, *Modern Crime Prevention Strategy* (March 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509831/6.1770\\_Modern\\_Crime\\_Prevention\\_Strategy\\_final\\_WEB\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf) [accessed 10 March 2017]

312. Some local authorities have requested powers of this type which would allow them to apply conditions banning the sale of super-strength products across several premises at the same time. The LGA and Broxtowe Borough Council in particular welcomed the proposals,<sup>304</sup> apparently believing them to be potentially more workable alternatives to Early Morning Restriction Orders (EMROs).<sup>305</sup>
313. The Association of Convenience Stores was opposed to the concept of GRIPs, stating that “licensing conditions are meant to be tailored to individual premises. Proposals to implement group conditions would place additional burdens on both on and off trade premises in a specific area”.<sup>306</sup>
314. Evidence relating to measures such as EMROs has highlighted to us the inherent problems associated with the imposition of blanket conditions on all licensed premises in a particular area, and this measure seems likely to run into the same legal challenges.
315. It is also unclear what they are intended to achieve, especially as the Modern Crime Prevention Strategy itself notes that where there are “serious concerns about individual premises”, the existing review system remains more appropriate.<sup>307</sup> Indeed, the GRIPs would not appear to provide local authorities with any substantive new powers to impose conditions on premises; rather they would provide local authorities with a blanket, and presumably less closely scrutinised, means for doing so across several premises simultaneously. If the condition in question would not be appropriate for one of the sets of premises individually, we do not see how it would become appropriate for those premises as part of a group.
316. ***We believe that proposed Group Review Intervention Powers, which would give local authorities the power to introduce mandatory blanket conditions on all premises in a particular area, should not be introduced. As a blanket approach to problems which can normally be traced back to particular premises, they are likely to suffer from the same problems as Early Morning Restriction Orders, and the same results can be achieved through existing means.***

### Restrictions on off-trade alcohol retailing in Scotland

317. While legislation in England and Wales has not changed to reflect the shift from on-trade sales to off-trade sales, in Scotland the Alcohol etc. (Scotland) Act 2010, which came into force in 2011, introduced a range of new measures targeted specifically at the off-trade. The provisions relating to supermarkets and off-licences were:
- (a) restrictions on multi-pack pricing, which prevent any form of multi-buy offer relating to alcohol;
  - (b) a ban on ‘buy one, get one free’ offers, or any other offer including free alcohol;

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304 See paragraphs 306–307. Written evidence from LGA ([LIC0099](#)); Broxtowe Borough Council ([LIC0138](#))

305 We discuss EMROs in paragraphs 451 *et seq.*

306 Written evidence from Association of Convenience Stores ([LIC0086](#))

307 Home Office, *Modern Crime Prevention Strategy* (March 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509831/6.1770\\_Modern\\_Crime\\_Prevention\\_Strategy\\_final\\_WEB\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf) [accessed 10 March 2017]

- (c) restrictions on the advertising of drinks promotions, restricting them to specific designated alcohol display areas in off-licence premises;
- (d) a requirement that all premises introduce a ‘Challenge 25’ policy as standard.<sup>308</sup>

318. Research conducted by NHS Health Scotland and the University of Glasgow suggests that this Scottish legislation was associated with a 2.6% decrease in off-trade sales in Scotland. In particular, it was associated with a 4% drop in wine sales (equivalent to 4.5 million bottles), and an 8.5% decrease in the sale of pre-mixed alcohol.<sup>309</sup> These declines were not observed in England and Wales, and other possible factors were taken into account. In their evidence, Alcohol Focus Scotland argue on the basis of this research that “it stands to reason that similar measures, if implemented, could have comparable results elsewhere in the UK”.<sup>310</sup> Scottish Health Action on Alcohol Problems argued that “although perhaps moderate, these impacts are nonetheless significant”, and that the legislation had also “contributed to a shift in knowledge and attitudes”, precipitating “increased agreement that alcohol is the drug that causes the most harm in Scotland”.<sup>311</sup>

319. A note of caution on the Alcohol etc. (Scotland) Act 2010 was sounded by the Institute of Alcohol Studies, which noted that other research had found that “the ban had changed shopping habits, causing people to buy fewer products per shopping trip, but to buy beer and cider more frequently, leaving the overall amount bought unchanged”. This was however based on “a panel survey method, which is known to be less accurate than sales data (which was the basis of the first piece of research)”.<sup>312</sup>

320. When asked whether the Government would consider introducing Scottish-style legislation specifically aimed at off-trade premises, Sarah Newton MP said:

“I believe that the Act gives flexibilities for local communities to address any harms or crime that arise from perceptions about people purchasing alcohol in those outlets, whether it is pre-loading or the sorts of multipack offers that you mention. We are seeing some really good examples, through the alcohol partnerships you will be aware of. Hopefully you have seen evidence from those. In communities experiencing anti-social behaviour or violence associated with alcohol, where people feel that it is to do with off-trade access to alcohol, they have come together to tackle that, including voluntary bans on multipack promotions, putting alcohol at the back of the store and limiting the hours when supermarkets or other outlets are open.”<sup>313</sup>

**321. While there appears to be some merit to a few voluntary schemes, the majority, and in particular the Government’s Responsibility Deal,**

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308 The Alcohol etc. (Scotland) Act 2010 also introduced a range of other provisions, including the Social Responsibility Levy, although this has, thus far, not been brought into force.

309 Mark Robinson, Claudia Geue, James Lewsey, *et al.* ‘Evaluating the impact of the alcohol act on off-trade alcohol sales: a natural experiment in Scotland.’ *Addiction*, vol 109 (2014), pp 2035–2043: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4241028/> [accessed 10 March 2017]

310 Written evidence from Alcohol Focus Scotland ([LIC0127](#))

311 Written evidence from Scottish Health Action on Alcohol Problems ([LIC0032](#))

312 Written evidence from Institute of Alcohol Studies ([LIC0047](#))

313 [Q 215](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)



**are not working as intended. We believe there are limits to what can be achieved in this way, and many of the worst operators will probably never comply with voluntary agreements. We strongly believe that the Alcohol etc. (Scotland) Act 2010 offers a proportionate and practical basis for measures specifically regulating the off-trade.**

322. *We recommend that legislation based on Part 1 of the Alcohol etc. (Scotland) Act 2010 should be introduced in England and Wales at the first available opportunity. In the meantime, the section 182 Guidance should be amended to encourage the adoption of these measures by the off-trade.*

## CHAPTER 8: TEMPORARY EVENT NOTICES

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### Introduction

323. Temporary Event Notices (TENs) are a ‘light touch’ system for regulating temporary events with fewer than 500 people (including staff) held by individuals, organisations or businesses where alcohol will be sold. In the 2015/16 financial year, 136,300 TENs were served, up from 124,400 in 2009/10.<sup>314</sup>
324. Despite frequent incorrect usage of the term on most local council websites and the GOV.UK website, under the Licensing Act 2003 no ‘application’ is involved. Those wishing to hold events give their local licensing authority a notice and pay a fee of £21. The onus is then on the police or environmental health officers to object, within three working days. They may do so only if they believe an event may lead to crime and disorder, cause a public nuisance, pose a threat to public safety or put children at risk of harm.
325. TENs are subject to a number of restrictions. These include:
- no more than 15 may be given for the same premises in a calendar year;
  - the duration of a single temporary event may not exceed 168 hours (7 days);
  - in aggregate, the TENs permitted for single premises may not exceed 21 days per year;
  - no more than five TENs are permitted per year for any individual without a personal licence and;
  - no more than 50 TENs are permitted for an individual holding a personal licence per year.
326. There are also ‘Late TENs’, which may be applied for no later than five working days before an event (and no earlier than nine working days). If an individual does not hold a personal licence, they may serve up to two late TENs per year, rising to 10 with a personal licence. Late TENs count towards the general limits on TENs.
327. A local council cannot reject a TEN unless they receive an objection from either the police or Environmental Health. Any objections must be made within three working days of the responsible authorities receiving them. They may object to an event on the grounds that it may:
- lead to crime and disorder,
  - cause a public nuisance,
  - be a threat to public safety, or
  - put children at risk of harm.

If an objection is made to a TEN, a local council will hold a hearing no later than 24 hours before the event, at which the licensing committee may either

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314 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016): <https://www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016-data-tables> [accessed 10 March 2017]

approve, add conditions, or reject the notice. If a Late TEN receives any objections, it is declared invalid without a hearing.

### Community versus commercial uses of TENs

328. A common, but misplaced, assumption is that TENs were originally devised for community purposes, but are now being abused by commercial operators. Those who hold this view believe TENs are functioning as legal loopholes to evade the terms imposed on commercial operators through premises licences, particularly with respect to later opening hours, allowing businesses to evade proper scrutiny and effectively acting as a second, much laxer, shadow licensing regime alongside the main provisions of the Act.
329. Councillor Page of the Local Government Association told us that:
- “Things such as temporary event notices are a real bane. Some of us object to the principle of them, because they are no longer for voluntary organisations, they are abused regularly by pubs and clubs, and for £21 they in no way cover the costs to the local authority in administering, let alone enforcing ... The original intention was for this to be used by local voluntary groups, and we could still see the regulations more tightly drawn to deliver that ... I can give the example of Reading, where we have the annual rock festival. We get floods of TENs from pubs and clubs that are looking to ride the wave of local business and dispense with all the hours and conditions that they would normally have to comply with. That was not the intention of the original TENs provision.”<sup>315</sup>
330. Many local councils and local residents’ associations shared this view that the system was being abused by licensees. Westminster City Council stated that while “they were intended for use by small events and for communities”, with a correspondingly low fee, of the 3,100 notices processed by the council every year, approximately 85% were to extend licensable activities in already licensed premises.<sup>316</sup> Ealing Civic Society provided examples of how they believed the system was being “abused”; “for example, a club in London W13 which had had operational hours restricted following a licence review regularly applied for TENs to run events into the early hours at weekends causing nuisance to neighbours.” In their view, “TENs have been subject to abuse and need tightening to ensure that existing conditions cannot easily be circumvented by their use.”<sup>317</sup>
331. However, one of the main original purposes of TENs was to retain flexibility within the Licensing Act 2003 for one particular kind of semi-commercial operator—private members’ clubs. Under the Licensing Act 1964 there had been the “Little Ships Club” rule, which allowed private members’ clubs to pass a rule, enabling them to hire out parts of their premises to non-members on an occasional basis despite not having a conventional premises licence.<sup>318</sup> The Licensing Act 2003 curtailed this right, and the TENs regime

315 [Q 21](#) (Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion, Local Government Association)

316 Written evidence from Westminster City Council ([LIC0090](#))

317 Written evidence from Ealing Civic Society ([LIC0129](#))

318 The rule takes its name from the case of *City of London Police Commissioners v Little Ship Club Ltd* (1964) Brewing Trade Review 702, which provided that a club could enact such a rule without offending the principle of “good faith” required of private members’ clubs. This was however subject to the courts’ right of veto in any case not covered by section 49(4).

was therefore in part devised to preserve the flexibility afforded to private members' clubs.

### *Cumulative impact*

332. Some respondents made the point that the TENs system did not consider the cumulative impact of many licensed premises in close proximity to one another, all using TENs frequently to extend their opening hours, generating a persistent nuisance to local residents in the process. The Harmood, Clarence, Hartland Residents Association noted that in Camden, north London:

“TENs are used by all or almost all the large venues, to the maximum 15 a year per premises and lasting for up to 21 days, to extend licensing hours. As a result, there is at least one local late TEN event on most weekend nights. Residents are sometimes, but not always, troubled by noise from venues ... They are ALWAYS disturbed by people issuing from licensed premises at any time up to 5am. We have resident parking until 11pm and visitors are allowed to park after that time. They are exceedingly rowdy when they return to their cars.”<sup>319</sup>

333. In some cases TENs are used by business owners to test the commercial viability of extended opening hours, prior to a formal application for variations to their existing premises licence. This appeared to be more common in Cumulative Impact Policy (CIP) areas,<sup>320</sup> where licensees need to make a strong case if they wish to extend their licensable hours in the face of the rebuttable presumption to reject applications.
334. We witnessed one such person who had used the TEN system in this way on our visit to the Southwark Licensing Sub-Committee hearing. During this hearing, the owner of a southern European-style café pointed to the fact he had used a number of TENs throughout the previous year to determine whether extended licensable hours would be a profitable business model, and whether it would cause problems with local residents.<sup>321</sup> The applicant's bid was ultimately successful, although it is unclear from the formal notice of the decisions whether his use of TENs contributed at all to the sub-committee's deliberations.
335. From what we have heard and witnessed, in isolation this practice does not necessarily pose a problem, and indeed may even provide nearby residents with a more realistic sense of whether extended opening hours will in fact bother them. However, where several businesses in close proximity to one another are routinely using TENs to extend their business hours, sometimes with no intention of formally regularising them through variation of their licences (and therefore subjecting themselves to appropriate scrutiny from licensing committees), this can cause problems.

### *Cost*

336. A number of local authorities and the LGA focused on the undue financial burden they believe has been placed on them by a system which charges only £21 per TEN, but can cost considerably more to administer.<sup>322</sup> Birmingham

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319 Written evidence from Harmood, Clarence, Hartland Residents Association ([LIC0033](#))

320 We discuss CIPs in paragraphs 402 *et seq.*

321 See Appendix 4.

322 Written evidence from Local Government Association ([LIC0099](#))

City Council suggested to us that “when the amount of officer time and other factors are considered, the true cost is estimated at £400”, or 19 times the statutory fee. The consequence of this was that “Birmingham City Council is asked to subsidise the cost of the licensing service, which should be self-financing and paid for by licence holders”.<sup>323</sup>

337. Other local authorities cited the true cost of processing a TEN as residing anywhere between £60 and, if a hearing is required, £2,000, but nearly all were unanimous in their belief that the £21 fee was grossly inadequate.<sup>324</sup>
338. Even some representatives of the pub trade agreed that the low fee charged for TENs should be looked at. Stuart Gallyot of Punch Taverns noted that the fee had not increased for the last 10 years, and accepted that “it may well have to rise”.<sup>325</sup> Brigid Simmonds of the BBPA voiced a similar opinion, suggesting that a general 10% increase in all licensing fees might be appropriate, though she believed that, for example, an increase to £100 specifically for TENs would be “hugely damaging” to the trade.<sup>326</sup>

### *Two-tiered system*

339. A number of respondents suggested that dividing TENs into two distinct categories, to reflect the different uses to which they are currently put, might solve a number of these issues. The TEN as it is would remain for non-commercial community organisations. In addition, new ‘commercial TENs’, which might apply to those already holding a premises licence, might cost substantially more than £21, to reflect the actual cost to the council of administering them. They would also entail a greater degree of consultation with local residents.
340. Leeds City Council for example suggested that “it would be useful to have two systems to reflect the additional work that goes into administering TENs for commercial purposes”,<sup>327</sup> while one local authority in Devon suggested a two-tier system, with larger events of “over 300 persons triggering an increased level of consultation, and conditions being able to be placed as part of the process”.<sup>328</sup>
341. Westminster City Council believed temporary events for existing premises licence holders should be split off entirely from TENs:

“These temporary extensions should be dealt with in a similar way to the minor variation process. This would enable the Licensing Authority to determine who it consults and also provide sufficient time (14 days) to consider the application. This temporary extension would then, if granted, permit the premises to operate within the remit of the permitted temporary extension subject to the conditions of the licence or any new conditions attached for the purpose of that temporary extension. Such a scheme would not necessarily need to then limit the licensed premises to a specific number of extensions a year, as the extensions would only be

323 Written evidence from Birmingham City Council Licensing and Environmental Health ([LIC0141](#))

324 The London Borough of Hounslow ([LIC0025](#)) estimated the average cost of processing a TEN as £60, Leeds City Council ([LIC0034](#)) estimated that any TEN requiring a hearing could cost in excess of £1,000, and Berkshire Licensing Liaison Group ([LIC0122](#)) estimated this could cost £2,000.

325 [Q 79](#) (Stuart Gallyot, Company Secretary and Director of Legal and Estates, Punch Taverns)

326 [Q 91](#) (Brigid Simmonds, Chief Executive, British Beer and Pub Association)

327 Written evidence from Leeds City Council ([LIC0034](#))

328 Written evidence from Devon Licensing Officers’ Group ([LIC0075](#))



permitted and conditions attached if it was deemed that the extension would not adversely impact one or more of the licensing objectives.”<sup>329</sup>

342. However, it is important to remember that TENs were originally devised for a broad range of purposes. These included not just small not-for-profit community events, but also allowing private members’ clubs to open their doors to the wider public for fundraising purposes. Peter Adkins, speaking from his experience as a lawyer to private members’ clubs, noted:

“The main problem is in the definition of what is commercial and what is not. A social club may well run a major event on New Year’s Eve, for instance, which will bring money into the club and raise the club’s coffers. Is that commercial or not? They are not-for-profit clubs, obviously, but there is money coming in. I can see various other premises licence holders thinking, ‘They are holding that event and paying £21. We are paying £150. What is the difference?’”<sup>330</sup>

343. Several organisations representing pubs and their customers were also opposed to the splitting of the TENs regime for similar reasons. CAMRA explained that they run beer festivals throughout the country, which would be difficult to classify as clearly either ‘commercial’ or ‘community’ events. Stuart Gallyot, representing the Punch Taverns pub company, pointed out that a distinction is already made between existing licence holders who apply for a TEN, and an individual without an existing licence, in terms of how many they may apply for. He went on to argue that, when dealing with pubs:

“We are talking about individual small businesses. We are not talking about large corporate organisations. We are talking about your local publican trying to put on a wedding or a beer festival. That is the context, and everybody thinks that if you pay £100 for a TEN instead of £21, that £100 is not just £100 of beer but £100 of profit. They have to be commercially viable and there should be some commercial reality around the level of fees.”<sup>331</sup>

344. ***Temporary Event Notices are used for a wide range of purposes, and the impact of a particular event on local residents cannot be reliably determined by whether they fall into broad ‘community’ and ‘commercial’ categories. We do not recommend the division of the current TENs system into ‘community’ and ‘commercial’.***

#### *Consultation on and scrutiny of TENs*

345. Many local residents wanted some means of being informed about and consulted on TENs in their local area. Dr Alan Shrank of the National Organisation of Residents’ Associations told us that:

“The problem with the TEN system is that residents know nothing about it until it happens. There is no advertisement, there is no warning and it comes out of the blue. A large number of them, the vast majority, as far as I am aware, cause no problems. But when they do cause problems, it gets into the press and you hear about the ones that are awful. How many really are that awful, I do not know, but it is not a major problem. There are a few people who abuse the system, and some licensees will

329 Written evidence from Westminster City Council ([LIC0090](#))

330 [Q 167](#) (Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors)

331 [Q 80](#) (Stuart Gallyot, Company Secretary and Director of Legal and Estates, Punch Taverns)

take advantage of the fact that they are 168 hours a week and you can have 15 of those in a year, which is tantamount to about a third of the year”.<sup>332</sup>

346. Many local residents’ associations and local councils voiced similar views, and were angry that only the police and environmental health can currently object to TENs, and only then on very limited grounds.<sup>333</sup> However, this is based on a partial misunderstanding of the TENs system as it currently stands; the Police Reform and Social Responsibility Act 2011, alongside changes allowing environmental health officers to object to TENs, also allowed objections relating to any of the four licensing objectives.<sup>334</sup> Previously, only objections relating to the prevention of crime or disorder were permitted.
347. A number of local councils suggested that, rather than opening up TENs to direct consultation, the list of responsible authorities who could object to them should be expanded instead. Middlesbrough Council and Cornwall Council Licensing Authority suggested that all responsible authorities, not just police and Environmental Health, should be able to object to a TEN.<sup>335</sup> The former did, however, acknowledge that “this could impact on the timescales involved as at the present time there is very little time for objections, modifications, hearings etc.”<sup>336</sup> Berkshire Licensing Liaison Group suggested the more moderate approach of opening TENs up to objections from licensing teams, in addition to the existing police and environmental health authorities.<sup>337</sup>
348. We believe that introducing an element of direct consultation from local residents would significantly slow down the TENs system, and undermine its fundamental purpose as a ‘light touch’ form of regulation. Local residents, unlike the police or environmental health officers, could not reasonably be expected to issue objections within three working days, as is currently the requirement. While opening up TENs to objections from all responsible authorities would again introduce many new sources of delay, we do believe there is merit in giving licensing authorities the power to object to TENs. Local councillors, as representatives of the views of their local residents, can then relay concerns from the local community in a timely and efficient way.
349. ***We recommend that licensing authorities be given the power to object to Temporary Event Notices, alongside police and environmental health officers. A system for notifying local councillors and local residents of TENs in a timely fashion should also be implemented.***

### Other issues

350. There were a number of complaints relating to the addition or amendment of conditions placed on TENs. At present, if objections are raised by police and/or environmental health officers before a hearing of the licensing sub-committee is held, a TEN may be amended if all parties are in agreement, but this is not the case if agreement is reached during a hearing. Section 106(2) of the Licensing Act 2003 reads: “at any time before a hearing is held or dispensed with under section 105(2), the chief officer of police may, with

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332 [Q 75](#) (Dr Alan Shrank, Chairman, National Organisation of Residents Associations)

333 Written evidence from Middlesbrough Council ([LIC0073](#)) and Cornwall Council Licensing Authority ([LIC0069](#))

334 Paragraph 327

335 Written evidence from Middlesbrough Council ([LIC0073](#))

336 Written evidence from Cornwall Council Licensing Authority ([LIC0069](#))

337 Written evidence from Berkshire Licensing Liaison Group ([LIC0122](#))

the agreement of the premises user, modify the temporary event notice by making changes to the notice returned to the premises user under section 102.”<sup>338</sup>

351. In a similar vein, one respondent explained that:

“The current process for adding conditions to TENs when all parties are in agreement is bureaucratic. Currently only the Licensing Committee can add conditions to TENs, which means that all cases have to be referred to the Licensing Sub-Committee even though all parties are in agreement. This process can be very costly to LAs, therefore it should be reviewed to allow a hearing to be dispensed with if all parties are in agreement.”<sup>339</sup>

352. ***We recommend that section 106(2) of the Licensing Act 2003 be amended, replacing the words “before a hearing” with “before or during a hearing”, to enable TENs to be amended during a hearing if agreement is reached.***

353. We also received evidence that event organisers are applying for multiple TENs on adjacent plots of land, in order to circumvent the restrictions on the permissible size of events. Cornwall Council Licensing Authority noted that they occasionally saw multiple submissions for TENs “each for 499 people, on adjoining pieces of land. This in effect authorises a much larger event than the TENs system was intended for. This can happen as premises can be split into separate sections and are then classed as different premises.”<sup>340</sup>

354. ***Where it appears that notices are being given for TENs simultaneously on adjacent plots of land, resulting in effect in the maximum number attending exceeding the 500 person limit, we would expect the police or environmental health officers to object, and the licensing authority to issue a counter-notice. We recommend that the section 182 Guidance be amended to make this clear.***

355. The Act requires local authorities to keep a register recording all TENs they have received, and this is supported by the section 182 Guidance, which additionally states that there is “no requirement to record all personal information given on a TEN”.<sup>341</sup> However, neither the Act nor the Guidance says anything about what information should be stored with regards to TENs, what format they should be retained in, and for how long they should be retained.

356. As previously noted in Chapter 3, we ourselves witnessed an apparent case of the inadequate recording of TENs received when we visited a hearing held by Southwark Council’s licensing sub-committee. While the agenda for the hearing concerning one particular restaurant noted specifically that “there have been no temporary event notices (TENs) submitted for this address within the last 12 months”, the applicant themselves went on to contradict

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338 Licensing Act 2003, [section 106\(2\)](#)

339 Written evidence from Caroline Sharkey ([LIC0119](#))

340 Written evidence from Cornwall Council Licensing Authority ([LIC0069](#))

341 Licensing Act 2003, section 8(1ab); Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003* (March 2015), paragraph 7.31: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418114/182-Guidance2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf) [accessed 10 March 2017]

this in oral testimony, stating that he had in fact filed the maximum possible number of TENs permitted for single premises (15) in a single year.<sup>342</sup>

357. *Although it is difficult to know whether the inadequate recording of TENs is widespread among local councils, we recommend that the section 182 Guidance be strengthened and clarified with respect to the collection and retention of TENs. It should clarify what personal information should be retained and in which particular format.*
358. *This information must be retained in a system allowing for its quick and easy retrieval, both by local authorities and by the public, and in such a way that local and national statistical data can be produced from them. The national GOV.UK platform should be used for receiving and processing TENs.*

### Community and Ancillary Sellers' Notices (CANs)

359. CANs are a substantial new addition to the licensing system, which will be introduced if and when section 67 of the Deregulation Act 2015 is brought into force. The stated intention for this new category is substantively to deregulate the serving of small quantities of alcohol by community premises and some small businesses. Sarah Newton MP told us that CANs “are a very targeted measure for community groups ... who want to have activities in a village hall, where they want to sell some alcohol, and ... bed and breakfast providers or cottage owners where people are going on holiday”.<sup>343</sup>
360. Very few respondents appeared to be aware of these measures, and none were keen on them as currently proposed. On the other hand, a small minority of respondents, such as Cornwall Council Licensing Authority, believed they were too limited, and should also include “hairdressers and florists” within the definition of ancillary seller.<sup>344</sup>
361. Most, however, were of the opinion that this was an unnecessarily complex procedure which would further complicate the work of interpreting the Act. Lancashire Constabulary and the National Police Chiefs’ Council noted that it would “add further layers of complexity around licensing legislation”;<sup>345</sup> Plymouth City Council was also critical of its “unenforceable limits on the levels of alcohol provided”.<sup>346</sup>
362. Broxtowe Borough Council proposed an alternative approach, which included granting exemptions to “the various bodies on a ‘de minimis’ basis”.<sup>347</sup> Plymouth City Council made a similar suggestion when they argued for providing exemptions for such ancillary premises “from the current normal application system, such as the requirement for a public notice, only to require notifying the Police and environmental health and also to introduce a reduced annual fee payable every 3 years”.<sup>348</sup>
363. Action with Communities in Rural England, a charity supporting rural community activity, also noted that they had “no evidence that village halls

342 See Appendix 4.

343 [Q 221](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

344 Written evidence from Cornwall Council Licensing Authority ([LIC0069](#))

345 Written evidence from Lancashire Constabulary ([LIC0139](#))

346 Written evidence from Plymouth City Council ([LIC0048](#))

347 Written evidence from Broxtowe Borough Council ([LIC0138](#))

348 Written evidence from Plymouth City Council ([LIC0048](#))

were intending to rescind their Premises Licences” if and when CANs were introduced.<sup>349</sup>

364. It is also very unclear when the Government intends to introduce this measure. Despite having been on the statute book since March 2015, no further announcements or updates have been made since then. When we asked Sarah Newton MP about when she expected CANs to be introduced, she told us that “there is no particular reason why they have not come into effect other than finding parliamentary time ... I really do not know when they will come into effect”.<sup>350</sup> She emphasised that there was “proper consultation on them” and that the delay was not the result of any objections they had received regarding CANs.

365. When we requested further clarification on this issue, we received further evidence from her stating that:

“Commencing the CAN is not simply a matter of signing the relevant commencement order for the Deregulation Act 2015: two pieces of additional secondary legislation is [sic] also required before the provisions can commence.

First, secondary legislation must list the type and size of business which may use a CAN, provide a definition of community group, and specify the quantity of alcohol which is permitted to be sold. The secondary legislation will be subject to the affirmative procedure.

Second, further secondary legislation is required to prescribe the form which CAN users will submit to the licensing authority, and the fee is also required. This secondary legislation will be subject to the negative procedure.”<sup>351</sup>

366. We sympathise with the view that CANs might make an already complex system even more difficult to understand. The stated purpose of the Deregulation Act 2015 is “to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals.”<sup>352</sup> Implementation of section 67 (introducing CANs) would add 14 new sections to the Licensing Act.

367. We are also concerned that, given the issues around TENs, further deregulation, especially given the lack of specificity surrounding ‘community groups’ and ‘ancillary sellers’, could open up the licensing system to abuse. At present, there are very few situations which are not adequately catered for by either full premises licences on the one hand, or TENs on the other.

368. ***We recommend that section 67 of the Deregulation Act 2015, relating to Community and Ancillary Sellers’ Notices, should not be brought into force, and should be repealed in due course.***

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349 Written evidence from Action with Communities in Rural England ([LIC0059](#))

350 [Q 221](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

351 Supplementary written evidence from Home Office ([LIC0175](#))

352 Deregulation Act 2015, [Long Title](#)

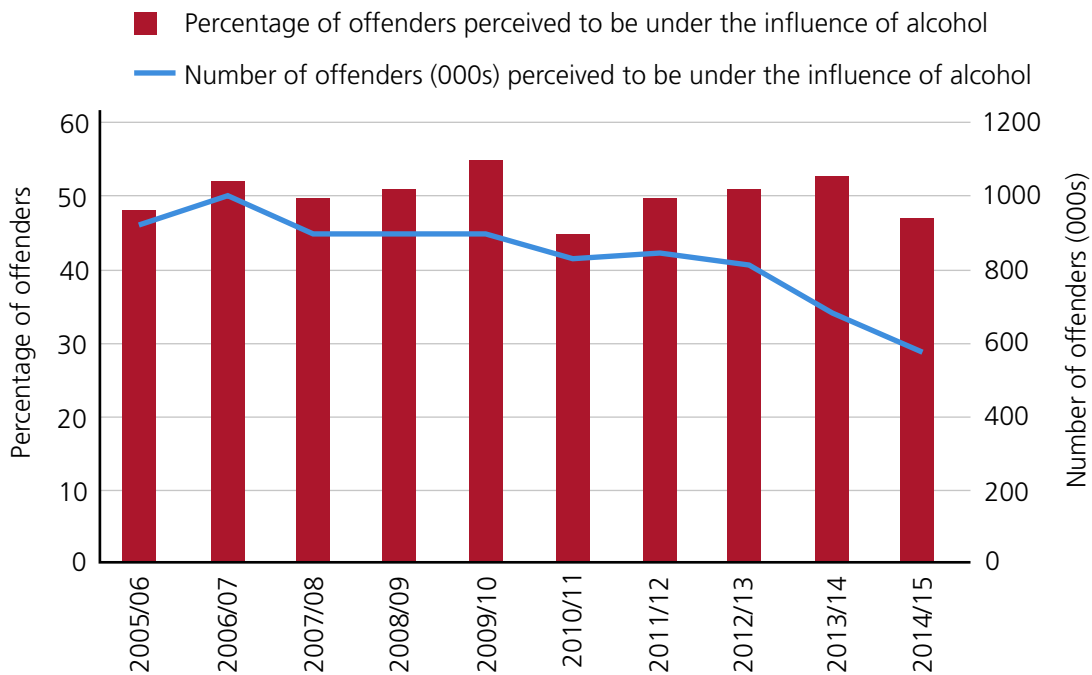


## CHAPTER 9: CRIME, DISORDER AND PUBLIC SAFETY

### Introduction

369. The consumption of alcohol, with its disinhibiting effects on behaviour, has and most likely always will be associated with some level of crime and disorder, which must be controlled and actively managed. For most of the past two centuries, the police have been primarily entrusted with this task, and this remains the case today, even as some types of licensed premises are increasingly expected to take on a greater share of this burden through the hiring of private security. In relation to the Licensing Act 2003, the police are also a designated responsible authority, which entitles and indeed requires them to scrutinise licensing applications and make representations against those they have reason to believe risk undermining one of the four licensing objectives. Furthermore, they are one of only two responsible authorities currently empowered to object to TENs, alongside environmental health officers.

**Figure 6: Violent incidents where the victim believed the offender(s) to be under the influence of alcohol, year ending March 2006 to year ending March 2015, England and Wales**



Source: Office for National Statistics, 'Nature of crime tables, year ending March 2015' (16 July 2015): <https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2015/bulletintablesfocusonviolentcrimeandsexualoffencesyearendingmarch2015/03natureofcrimetablesyearendingmarch2015violencetcm774326921.xls> [accessed 10 March 2017]

370. The challenges the police face are substantial, but the trends since the Act was brought into force have been broadly encouraging (Figure 6). The proportion of violent incidents in which victims believed the offender to be under the influence of alcohol has remained relatively stable, at between 48% and 55% of all violent incidents between 2006 and 2015. This period has also seen a steady overall decrease in violent incidents, and the number of violent incidents in which the offender was likely to have been under the

influence of alcohol fell from 924,000 in the year ending March 2006, to 592,000 in the year ending March 2015.

371. We received little evidence specifically on the subject of public safety, as distinct from crime and disorder, despite asking about the subject both in our call for evidence and in oral evidence sessions. We have therefore not discussed this as a subject separate from crime and disorder.

## **Policing**

### *Police licensing officers*

372. The role of police licensing officers (PLOs), who may or may not be fully attested police officers depending on the forces they serve, is to supervise licensable activities within their jurisdictions. Depending on their force, they will often work in licensing or ‘harm reduction’ teams, and may well have responsibilities for monitoring a wide range of licensable activities besides the serving of alcohol, such as gambling or some forms of live entertainment.
373. Among their primary duties, they will normally be required to assess licence applications in their local area and submit representations on behalf of the police in cases where they have concerns that one of the four licensing objectives is likely to be breached. They may well also be expected to liaise with and inspect premises, promote best practice in premises relating to crime, disorder and public safety, and identify problem premises which may be linked with crime and disorder in the local area. As such, theirs is a highly technical job which requires a strong understanding of licensing law, the ability to develop good working relationships with licensees, and to predict and head off problems before they arise.
374. The crucial role that police licensing officers could perform in the licensing system was emphasised to us in the course of our inquiry. David Banks of Rushcliffe Borough Council told us that in Nottinghamshire, they were:
- “... very fortunate to have a police licensing officer who provides very good case-specific and premises-specific information to licensing authorities. That allows us often to make decisions, take action and negotiate situations before even an appeal or a hearing takes place, which can also save time and costs”.<sup>353</sup>
375. Evidence we have received suggests that there are very often insufficient numbers of police licensing officers to ensure the satisfactory regulation of premises. For example, South Somerset District Council reported that their single police licensing officer was currently covering three large rural council areas, so was “unable to devote as much time as possible to consideration of individual applications”.<sup>354</sup>
376. A number of respondents argued that the police licensing function has also deteriorated in recent years. The view of Derbyshire Police was that while police powers were sufficient, they were often not being used effectively due to a lack of knowledge and training. They stated that “the role of the licensing officer is specialised and this is not recognised. Many police officers are under the impression that since the introduction of the 2003 licensing

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353 [Q 28](#) (David Banks, Executive Manager Neighbourhoods, Rushcliffe Borough Council)

354 Written evidence from South Somerset District Council ([LIC0019](#))

act, the police role is merely an administrative function and as such are not giving it much weight”.<sup>355</sup>

377. It was suggested to us by a number of respondents that alcohol licensing is often not taken seriously as a policing role—one respondent claimed that “whilst a lot of police forces have appointed licensing officers, a number have merged the role with others tasks, therefore diluting their ability to address licensing matters. Additionally some forces have deleted the post and given it to unskilled staff alongside their other roles”.<sup>356</sup> Hounslow Borough Council expressed similar sentiments, when they explained that:

“The biggest problem that we experience is that Police are not adequately trained to use their powers effectively. This is no fault of the individual officers, but the organisation as a whole. Officers are thrown into the role (often working alone or with one other officer) and are responsible for the whole borough’s licensed premises. It is a steep learning curve and understandably a lot of the early work (such as objections to applications) are not relevant or appropriate. We find that experience grows over time, but in our view officers are forced to learn on the job without any real understanding of the powers and constraints they have upon them.”<sup>357</sup>

378. Given the complexity of aspects of alcohol licensing law, and the low ratio of PLOs to licensed premises in many areas, we do not believe it is appropriate to over-burden these officers with other responsibilities. A wrong judgment call can have considerable consequences.
379. **We are convinced that licensing is a sufficiently specialist and technical area of policing, requiring a distinct and professional body of police licensing specialists. Although we are aware of the many demands currently placed on police resources, the proper and attentive licensing of premises has a considerable if sometimes indirect impact on public reassurance and wider aspects of crime and disorder. It is therefore important that the role of police licensing officers should not be diluted or amalgamated, as evidence suggests is occurring in some constabularies. They do not need to be sworn police officers, and in many cases it may indeed be preferable that this role be performed by civilian police staff.**

### *Training*

380. We have heard from a number of respondents that there is currently no standardised, national scheme for the training of police licensing officers. Overall, the quality and quantity of training in licensing, both for specialist licensing officers and police constables more generally, appears to be highly variable between forces. Hackney Borough Council reported that in their experience police officers were “often just thrust into the licensing team with little knowledge of the subject and are expected to learn on the job”.<sup>358</sup> Very few local councils believed training in their local area to be satisfactory.
381. The London Borough of Hounslow were representative of many submissions when they stated: “we strongly believe that officers should undertake intense

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355 Written evidence from Derbyshire Police ([LIC0028](#))

356 Written evidence from James Mooney ([LIC0008](#))

357 Written evidence from London Borough of Hounslow ([LIC0025](#))

358 Written evidence from London Borough of Hackney ([LIC0136](#))

and comprehensive training before they start the role and that this should be complemented by a mentor within the police who has licensing experience.” They were also keen that “further and frequent refresher training” be provided.<sup>359</sup>

382. Police training with respect to licensing needs to address two groups. While specialist police licensing officers obviously require considerable training in licensing law and practice, many police constables will also require some degree of licensing knowledge for the performance of their routine duties. Indeed, it was the view of Birmingham City Council that more emphasis needed to be placed on the latter, as the knowledge of how to use police licensing powers is “focussed in the hands of a very small number of specialist police licensing officers”, and it would be “preferable if there was a greater awareness amongst the general neighbourhood police teams of their powers”.<sup>360</sup> Indeed, it most likely to be a patrolling constable who will notice any obvious infringements of licensing conditions, and may be required to make use of closure powers in urgent situations.
383. Despite Birmingham City Council’s concerns, training for patrol officers on basic aspects of licensing law appear to already be provided by College of Policing training programmes. Sarah Newton MP told us that a module on “drug offences and substance misuse, which covers training on alcohol licensing matters” is now included in the two-year training course (known as the Initial Police Learning and Development Programme) which is provided to new recruits by the College of Policing.
384. However, the National Police Chiefs’ Council’s (NPCC) position on the level of specialist training that should be provided to police licensing officers at the national level is presently unclear. We were informed by Assistant Chief Constable Rachel Kearton of the NPCC that there was currently “a programme of development for people working in this area, which brings people up to speed and keeps them up to scratch and knowing what is expected of them”, and the level of training delivered that was “very high”.<sup>361</sup>
385. We were told that, on a national level, this consisted of annual conferences with between 100 and 120 attenders, with presentations given by between one and three barristers, covering a broad range of licensing subjects. In 2014 this amounted to seven and a half hours of training at national level on the subject of licensing.<sup>362</sup> The subjects covered appeared to be disparate, and had no clear guiding themes.
386. However, in written evidence the NPCC noted that there was currently “no accredited national training or qualification specifically for police licensing officers. Training is currently being provided at a local force level, with little consistency. There is no national requirement to train police officers with respect to licensing legislation.” The NPCC was therefore approaching the College of Policing “with a view to developing a national accreditation framework for the licensing training of police officers”.<sup>363</sup>

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359 Written evidence from London Borough of Hounslow ([LIC0025](#))

360 Written evidence from Birmingham City Council Licensing and Environmental Health ([LIC0141](#))

361 [Q 143](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs’ Council)

362 Written evidence from National Police Chiefs’ Council ([LIC0166](#))

363 Written evidence from National Police Chiefs’ Council ([LIC0166](#))

387. We believe an improvement in the quality and consistency of police licensing decision-making is necessary, and that the current and proposed schemes fall short of delivering this. A single day of non-compulsory national training per year, given to a limited number of attenders, on a national basis is clearly insufficient for a complex and nuanced area of policing, while an accreditation scheme is welcome but is unlikely to achieve its objectives unless the underlying programme of training on offer is improved and extended. The task of delivering this training should fall to the College of Policing, not to local forces.
388. *We recommend the development and implementation of a comprehensive police licensing officer training programme, designed by the College of Policing. While we accept that such an undertaking will require additional funds, these costs will likely be more than offset if the quality of police licensing decisions is improved, thereby reducing the number of appeals and other corrective procedures.*

#### *Police evidence*

389. The police, as a listed responsible authority under the Licensing Act 2003, are entitled to make representations at licensing hearings against applications they believe are likely to breach one of the four licensing objectives. Their claims should be supported by evidence, which in practice will often consist of incident logs or summaries showing patterns of crime or disorder linked to particular premises, or, in the case of an application for a new licence, in the area in which it is sought.
390. We heard several perspectives on the quality and consistency of the evidence presented by police representatives at hearings. The Local Government Association said that “the quality of the police evidence is critical in our decisions and they are much more conscious of the need for more robust evidence than they used to produce. The police train their staff better now in the Licensing Act and in the requirements of licensing committees.”<sup>364</sup>
391. However, the majority of witnesses with a view on this subject believed there to be serious flaws with the way that police representatives sometimes presented their evidence, with the quality and consistency of this evidence, and with the lack of scrutiny directed at this evidence by licensing committees. The National Association of Licensing and Enforcement Officers, for example, said they were concerned by the way many police forces presented evidence at hearings. They said that there was “an inconsistency in the process which needs addressing nationally by introducing guidelines.”<sup>365</sup>
392. Andrew Grimsey, of Poppleston Allen, highlighted how this worked in practice:

“There are two scenarios. There may be a review based on crime and disorder incidents at a premises and there is a summary of those incidents. Another review is brought by the police in a different area, and they disclose all of what you might call the first-capture report—the 999 calls, the whole lot. One will be several lever arch files thick; the other will be just a summary. The problem with the summary approach is that you cannot trust the data, because sometimes in those incidents

364 [Q 28](#) (Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion, Local Government Association)

365 Written evidence from National Association of Licensing and Enforcement Officers ([LIC0148](#))



there will be an A-board falling over or a refusal at the door—good compliance, if you like—and we cannot trust that; but, equally, if we are served with all the first-capture material, it costs thousands of pounds for a lawyer to go through it, so it is a difficult situation for a typical licensee to deal with.”<sup>366</sup>

393. A number of respondents also noted that licensing committees were often too ready to accept police evidence without applying sufficient scrutiny. Reba Danson of the Deltic Group argued that Councillors too often wanted to be seen to support police and other officers, “therefore even if a review is brought on weak and minimal evidence, Councillors are unlikely ever to simply dismiss an application as unwarranted, favouring the imposition of restrictions to ‘save face’, knowing the licence-holder is not in a position to challenge without incurring risks and costs.”<sup>367</sup>

394. Several witnesses drew our attention to paragraph 9.12 of the section 182 Guidance. This was amended in 2012 to state that:

“The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.”<sup>368</sup>

395. The sentence that follows in the guidance, states that “it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing”.<sup>369</sup> John Gaunt, of John Gaunt and Partners, claimed this was too often not taken seriously, either by police or licensing committees.<sup>370</sup>

396. Kate Nicholls of the Association of Multiple Licensed Retailers argued that the wording of paragraph 9.12 was leading “local licensing officers and committees to accept without question whatever the police say, in terms of both evidence and recommendations”. The consequence, in their view, was “a sort of vacuum at the heart of licensing authority work, whereby the police are going without scrutiny in some of the things that are being said about matters that are very material to businesses and local residents.”<sup>371</sup>

397. It should also be noted that, in addition to paragraph 9.12, section 182 Guidance makes frequent additional reference to the importance of the police in relation to licensing law, and specifically to the importance of police advice and evidence, including in paragraph 2.1, which states that “licensing

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366 [Q 119](#) (Andrew Grimsey, Solicitor, Poppleston Allen)

367 Written evidence from Reba Danson ([LIC0125](#))

368 Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003* (March 2015), paragraph 9.12: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418114/182-Guidance2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf) [accessed 10 March 2017]

369 *Ibid.*

370 [Q 119](#) (John Gaunt, Partner, John Gaunt and Partners)

371 [Q 93](#) (Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers)

authorities should look to the police as the main source of advice on crime and disorder”.<sup>372</sup>

398. In contrast to the strong criticisms of paragraph 9.12 from industry representatives, most licensing authorities had little to say on this subject, with only Hounslow Borough Council expressing the view that it was appropriate for the Guidance to advise giving “greater weight to police representations”.<sup>373</sup>
399. A representative of the NPCC responded to these claims by defending the police use of evidence at licensing hearings. She stated that they expected there to be “rigour around the evidence that is presented” by police representatives, that the police did not have a “bigger position around the table than anyone else” and that they did not expect there to be any “overemphasis on the police evidence.”<sup>374</sup>
400. **We believe it is highly likely that licensing committees will take police evidence seriously, especially if it is presented in a consistent and compelling fashion, regardless of whether they are required to by the section 182 Guidance. The risk that presently exists is that this additional emphasis could lead some licensing committees to partially or fully abdicate their responsibility to scrutinise police evidence to the same high standards as they would any other evidence. Our evidence suggests this is indeed occurring in some areas. It is entirely wrong that police evidence should be given more weight than it deserves solely because of its provenance.**
401. *Given evidence that paragraph 9.12 of the section 182 Guidance is being misinterpreted by licensing committees, and the fact that similar sentiments, more clearly stated, are already expressed in paragraph 2.1 of the Guidance, we recommend that paragraph 9.12 be removed.*

### Cumulative Impact Policy

402. A Cumulative Impact Policy (CIP, which implements what are commonly known as Cumulative Impact Areas or Special Policy Areas) is a tool outlined in the section 182 Guidance which allows local authorities to consider the ‘cumulative impact’ of all licensed premises in a specified area, in a way not normally permitted by the Licensing Act 2003.<sup>375</sup> A CIP creates a rebuttable presumption against the grant of a new licence or a variation of an existing licence in certain ways. The application will normally be refused unless the applicant can demonstrate that they will not add to the negative cumulative impact in the area.
403. Based on data from the Office for National Statistics, 106 English and Welsh local authorities accounted for the 215 CIPs in place as at 31 March 2016.

372 Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003* (March 2015), paragraph 2.1: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418114/182-Guidance2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf) [accessed 10 March 2017]

373 Written evidence from London Borough of Hounslow ([LIC0025](#))

374 [Q 143](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs’ Council)

375 Prof Roy Light ([LIC0168](#)) noted that CIPs represent a very limited reversion to the situation prior to 1999, where applicants for new licences were required to prove there was an unmet “need” or “demand” for new premises in a particular area.

The number of CIPs reported in any given local authority area ranged from between one and eight.<sup>376</sup>

404. In order to introduce a CIP in a particular area, local authorities must receive a relatively high standard of evidence showing that the cumulative impact of licensed premises there is threatening to contravene one or more of the licensing objectives.
405. We heard a diverse range of opinions on CIPs over the course of the inquiry. Many local authorities and police forces believe them to be useful instruments, with Staffordshire Police for example arguing that “Cumulative Impact Policies are used effectively within Staffordshire and have assisted greatly in limiting the detrimental effect of excessive licensed premises within specific areas.”<sup>377</sup>
406. The Sunderland Health and Wellbeing Board claimed that the higher level of scrutiny they require from new applicants has resulted in a higher quality of licensed premises. In their view, CIPs encouraged applicants to consider more seriously “how best to ‘upgrade’ the quality of their application”, discouraging more disreputable “vertical drinking establishments”,<sup>378</sup> in favour of “more upmarket restaurants and wine bars”.<sup>379</sup>
407. A number of industry representatives we have heard from opposed CIPs on principle. CAMRA described them as “blunt instruments”, which are “inappropriate in areas where there are still too many pubs closing every week.”<sup>380</sup> Admiral Taverns argued that they should be “the exception rather than the norm as they restrict development and initiative and can allow stale ideas to become un-challenged.”<sup>381</sup>
408. The Policing and Crime Act 2017 includes a provision<sup>382</sup> to place CIPs on a statutory footing. Local authorities who were aware of these plans were supportive of them, as were a number of industry representatives, with some caveats. The Association of Convenience Stores broadly welcomed the move, but argued that “primary legislation must stipulate a robust process for the introduction of a CIP at local level”. They also urged that evidence used to justify CIPs must be up to date and that “sunset clauses should also be applied at a local level to CIPs to ensure that they meet their objectives.”<sup>383</sup>
409. **We support the Government’s current move to transfer Cumulative Impact Policies from the section 182 Guidance and to place them on a statutory footing, as this will introduce much needed transparency and consistency in this area.**

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376 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016): <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016#other-topics> [accessed 10 March 2017]

377 Written evidence from Staffordshire Police ([LIC0037](#))

378 Written evidence from Sunderland Health and Wellbeing Board ([LIC0110](#))

379 *Ibid.*

380 [Q 84](#) (Tim Page, Chief Executive, Campaign for Real Ale)

381 Written evidence from Admiral Taverns ([LIC0124](#))

382 Section 141. This provision will not however be brought into force when the majority of the provisions of the Policing and Crime Act 2017 which relate to licensing are commenced on 6 April 2017.

383 Written evidence from Association of Convenience Stores ([LIC0086](#))

410. However, it was pointed out to us that the wording of section 5(5A) of the Act introduced by the Policing and Crime Act 2017 had the potential to create confusion and unintended consequences. This states:

“A licensing authority may publish a document (“a cumulative impact assessment”) stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority’s duty under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts.”

411. It is unclear from this wording whether local authorities will now be required to reject all new licence applications made in CIP areas, or whether, as is apparently intended, they retain the discretion currently set out in the section 182 Guidance, to authorise new licensed premises, if they are persuaded in each individual case that the grant of the licence is consistent with the licensing objectives.
412. **We agree with criticism of the drafting of the new section 5(5A) of the Act, as it threatens to remove discretion from local authorities on how they may interpret their own cumulative impact policies.**

#### **Police closure powers, and powers of summary review**

413. The police have a range of means by which they can close premises and expedite licence reviews, conferred upon them by the Licensing Act 2003 and related legislation, namely the Criminal Justice and Police Act 2001, the Violent Crime Reduction Act 2006 and the Anti-social Behaviour, Crime and Policing Act 2014. There is, however, some degree of confusion among police and local authorities as to the correct implementation of these powers, and considerable room for clarification in this area.
414. In relation to police powers of closure and summary review in general, the views of the NPCC and some police forces were that they tended to be used sparingly—Chief Superintendent Gavin Thomas, of the Police Superintendents’ Association, for example, told us that police powers of closure and review were more often used to encourage businesses to improve their practices, and “does not necessarily denote that [a business] ends up being closed in the longer run”.<sup>384</sup> In general, most police respondents thought that closure powers were often too complicated and restrictive to use, and that training on their use was insufficient.<sup>385</sup>
415. Several law firms representing licensees, on the other hand, suggested that police did not always understand their powers sufficiently or use them appropriately. Poppleston Allen noted that, after a serious incident or death at premises, there could be “a disconnect between the Police Licensing Officers on the ground (who know the individuals at licensed premises quite well and might favour a voluntary resolution) and their superiors, who may demand ... that ‘something is done’. The result of this is often a closure notice or an Expedited Review but we question whether in all cases this is

384 [Q 140](#) (Chief Superintendent Gavin Thomas, Police Superintendents Association of England and Wales)

385 Written evidence from NPCC ([LIC0115](#)), Durham Constabulary ([LIC0045](#)), Sussex Police ([LIC0042](#))

the appropriate tool. The effect on a licensed business of being temporarily closed (often for several weeks) until a full hearing can be catastrophic.”<sup>386</sup>

416. It should also be noted that the true extent to which police closure powers are used is currently unclear. Statistics on closure notices provided by the Home Office, for example, appear to show that only 73 closure notices were issued by police across England and Wales in 2015/16,<sup>387</sup> and this same number was cited to us by Assistant Chief Constable Rachel Kearton.<sup>388</sup> However, after further investigation we ascertained that this figure relates only to closure notices issued under section 169A of the Licensing Act 2003 (pertaining to the sale of alcohol to those under the age of 18). It does not cover closure notices issued under section 76 of the Anti-social Behaviour, Crime and Policing Act 2014, and indeed no figures have been provided by the Home Office on the use of these powers. We have been assured by the Home Office that these statistics are now being collected, and will be made available for the 2016/17 financial year before the end of the calendar year. **However, we were surprised to learn that the Home Office have not collected centralised figures on the use of relatively serious police powers until now, and that figures relating to section 169A closure notices are presented in such a confusing and misleading way.**

*Section 19 of the Criminal Justice and Police Act 2001*

417. Under section 19 of the Criminal Justice and Police Act 2001, police were given the power to serve a closure notice where the police were satisfied that “the unlicensed sale of intoxicating liquor” was occurring at a premises. In practice, this was used when police were satisfied that alcohol was being sold from premises that were not licensed at all to sell it. The Licensing Act 2003 amended this power to refer to the “unauthorised sale of alcohol” instead. The practical effect of this was that police started to use this power more broadly, in relation to any breach of a licence condition.
418. In November 2010, the Home Office issued guidance entitled *Practical Guide for Preventing and Dealing with Alcohol Related Problems: What You Need to Know*<sup>389</sup>, which indicated that the effect of a section 19 closure notice was that all licensable activities must cease immediately. Additionally, anyone who sold alcohol after a closure notice had been issued could be arrested or summonsed for a criminal offence under section 136 of the Act.
419. However in March 2012, in a judicial review brought by premises known as The Bank in Wakefield, the Home Secretary (1st Defendant) and West Yorkshire Police (2nd Defendant) agreed to the following Consent Order:

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386 Written evidence from Poppleston Allen ([LIC0105](#))

387 Home Office, ‘Alcohol and late night refreshment licensing England and Wales’ (31 March 2016), Tables 13a and 14b: <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016#other-topics> [accessed 10 March 2017]

388 [Q 140](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs’ Council)

389 Home Office, *Practical Guide for Preventing and Dealing with Alcohol Related Problems: What You Need to Know* (Third Edition, November 2010)



**Box 7: The restricted effect of a closure notice**

The Claimant and the First and Second Defendant accept that:

“The service of a Closure Notice pursuant to section 19 of the Criminal Justice and Police Act 2001 does not:

- (a) require the premises to close or cease selling alcohol immediately; or
- (b) entitle the Police to require it to do so; or
- (c) entitle the Police to arrest a person on the sole ground of non-compliance with the Notice.”

Source: *Order of the High Court (Administrative Court)*, 6 March 2012<sup>390</sup>

Additionally the Home Secretary and West Yorkshire Police each agreed to pay half the Claimant’s damages and costs.

420. The Home Office tell us that the guidance was withdrawn in 2011 after errors were discovered in the text, and that there are no plans to issue an updated version. Nevertheless it appears that the police still attempt to apply this misinformed approach to this day.

421. ***We recommend that the section 182 Guidance be amended to make clear that the service of a Closure Notice pursuant to section 19 of the Criminal Justice and Police Act 2001 does not:***

- ***require the premises to close or cease selling alcohol immediately; or***
- ***entitle the police to require it to do so; or***
- ***entitle the police to arrest a person on the sole ground of non-compliance with the notice.***

***Summary Reviews and the Violent Crime Reduction Act 2006***

422. The Violent Crime Reduction Act 2006 inserted sections 53A–53C into the Licensing Act 2003, bestowing upon the police the power to call for a Summary Review, if a senior officer believes that premises are associated with serious crime, serious disorder or both.<sup>391</sup>

423. Once an application for Summary Review has been submitted to a licensing authority, the sub-committee must decide within 48 working hours as to whether interim steps are necessary.<sup>392</sup> These may include: the modification of conditions on a premises licence; excluding the sale of alcohol by retail from the licence; the removal of the designated premises supervisor from the licence; and the suspension of the licence for up to three months.

424. The next stage in the proceedings is a full review hearing, which operates in much the same way as an ordinary review, with responsible authorities and other interested parties being consulted in the usual way, with the resulting decision suspended for 21 days, or until the outcome of any appeal.

390 *R (on the application of The Bar (Wakefield) Ltd) v Secretary of State for the Home Department and West Yorkshire Police*

391 While serious crime is defined according to section 81(2) and (3)(a) and (b) of the Regulation of Investigatory Powers Act 2000, serious disorder is not currently well defined.

392 However, section 53A(5) of the Act notes that “in computing the period of 48 hours mentioned in subsection (2)(a) time that is not on a working day is to be disregarded.”

425. The difficulty with the Summary Review procedure has been with understanding what ought to happen to interim steps pending an appeal. Interim steps such as the suspension of a licence for up to three months, or excluding the sale of alcohol from the conditions of a licence, can have a serious impact on the sustainability of a business. Beds & Bars, which operate a chain of hostels in Britain and elsewhere, argued that while they had never been subject to a summary review,

“... we do think that a right of immediate appeal needs to be given to premises licence holders, in relation to a determination by the licensing sub-committee to re-impose interim steps, during any appeal period. The effect of suspension of a licence throughout a drawn-out appeal, following the conclusion of the final review, could destroy an otherwise legitimate business, before the review was able to be heard”.<sup>393</sup>

426. Fabric, a central London nightclub which was temporarily closed in 2016 as a result of a police summary review and the imposition of interim steps, after two drug-related deaths at the club, also submitted evidence to our Committee. While acknowledging the severe and tragic nature of what had occurred at their club, they believed that police were going well beyond the original purpose of the powers, which related to ‘serious crime’ or ‘serious disorder’, particularly relating to knife or gun crime.

427. In their view, as interim steps come “in advance of service of the evidence, let alone proof of the facts”, any steps which imply closure of a premises “should be confined to the most extreme cases”. While they accepted there was an argument “for such closure where there is a significant risk of death or serious injury if it is not closed, the statutory provisions go very much wider than that.” In relation to their own case, they suggested that “where management practices can be improved, there is no reason to shut the business down.”<sup>394</sup>

428. When we asked District Judge Elizabeth Roscoe, who issued the most recent ruling on interim steps, she accepted that “an immediate ban on the sale of alcohol is a problem because it is a livelihood”, and there should therefore be a “very good reason” to resort to such measures.<sup>395</sup> In a case in 2014,<sup>396</sup> she explained that a “review closed the premises and there was an appeal. The licensed premises said that, because they had appealed, all the conditions came back and so they could sell alcohol. The ruling I gave was that the interim steps continued”. In her view, “if there are interim steps and there is a ban, as far as I am aware it will continue until the appeal. That depends on the interim steps, so there is a procedure for doing that”.

429. The Institute of Licensing, in response to our call for evidence, surveyed their members on the subject, and just over 50% believed that police “did not have sufficient training” to use their powers appropriately, while just over 15% believed they did. One licensing officer stated that “the closure powers and the s53A reviews do give police wide-ranging powers”, but questioned

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393 Written evidence from Beds & Bars ([LIC0114](#))

394 Written evidence from Fabric Life Limited ([LIC0157](#))

395 [Q 128](#) (District Judge Elizabeth Roscoe, Westminster Magistrates’ Court)

396 *The Commissioner of the Metropolitan Police v Mayfair Realty Ltd (The Lord Mayor and the Citizens of the City of Westminster, Interested Party)*, Westminster Magistrates’ Court, 22 July 2014—this is the case we refer to in Box 3 (paragraph 177), as demonstrating the importance of precedent in appellate decisions relating to licensing. As we explain in paragraph 179 a new section 53D, which attempts to resolve this issue, will be brought into force on 6 April 2017 by the Policing and Crime Act 2017 (Commencement No. 1 and Transitional Provisions) Regulations 2017 ([SI 2017/399](#)).

whether the resources and training existed to allow these powers to be used “proportionately and effectively”.<sup>397</sup>

430. The Home Office has already taken note of the limited and contradictory cases that have been considered in the courts on this point, and amendments to the powers have been made by the Policing and Crime Act 2017.<sup>398</sup> The proposals would give a licensing committee discretion to revisit interim steps at the review stage, and provides a right of expedited appeal to the Magistrates against that decision. These amendments are likely to resolve the difficulties that were highlighted in the Courts in relation to Summary Review.
431. **We sympathise with the police, practitioners and businesses who cannot always fully comprehend the complex process surrounding interim steps. We conclude that instead of conferring discretion upon the sub-committee to impose further interim steps upon a licensee pending appeal, a discretion to impose with immediate effect the determination that the sub-committee reached upon the full review would be preferable. This final decision must represent the sub-committee’s more mature reflection upon the situation, based upon the most up to date evidence, and this ought to be the decision that binds the licensee, if immediacy is a requirement, rather than the superseded interim steps.**

*Closure powers under the Anti-Social Behaviour, Crime and Policing Act 2014*

432. Section 76 of the Anti-Social Behaviour, Crime and Policing Act 2014 grants police the power to issue a closure notice or order, if on reasonable grounds they are satisfied that the use of the premises has resulted or (if the notice or order is not issued) is likely soon to result in crime or disorder. Specifically, for a 48 hour closure notice, there must have been, or it is likely there will be, nuisance to the public or disorder near the premises, or, in the case of a closure order of up to six months, disorderly, offensive or criminal behaviour, serious nuisance to the public or disorder near the premises.
433. In the view of Fabric Life Limited, which runs the well-known London nightclub Fabric, “this entire chain reaction may be triggered and pursued even where no offence has been committed or was ever likely to be committed, and regardless of whether the issues concerned were the fault of the management of the venue or were remediable through partnership action between the Police and the management.”<sup>399</sup>
434. The NPCC were also concerned about how section 76 powers could be applied, noting that they were “far more complex with regards its procedural requirements” than the section 161 powers originally contained within the Licensing Act 2003 and could be, in some circumstances “operationally impossible to adhere to”.<sup>400</sup> In contrast with Fabric, however, they believed these powers to be, overall, “far too restrictive”.

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397 Written evidence from Institute of Licensing ([LIC0126](#))

398 Home Office, *Impact Assessment, Policing and Crime Bill: Summary Reviews and arrangements for interim steps* (22 December 2015), p 6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499372/Impact\\_Assessment\\_-\\_Alcohol\\_Licensing\\_Summary\\_Reviews\\_and\\_Interim\\_Steps.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499372/Impact_Assessment_-_Alcohol_Licensing_Summary_Reviews_and_Interim_Steps.pdf) [accessed 10 March 2017]

399 Written evidence from Fabric Life Limited ([LIC0157](#))

400 Written evidence from NPCC ([LIC0115](#))

435. Any decision by the licensing sub-committee to revoke a premises licence at a mandatory review hearing after the imposition of a closure order made under section 80 or 84 of the Anti-social Behaviour, Crime and Policing Act 2014 must take immediate effect, subject only to paragraph 18(4) of Schedule 5 to the 2014 Act (power of magistrates' court to modify closure order pending appeal).
436. *Within the Anti-Social Behaviour, Crime and Policing Act 2014, the power of the magistrates to “modify” the closure order is curious wording, which has already perplexed the magistrates’ courts, given that the magistrates are just as likely to be invited to exercise their power to lift the revocation and re-open premises at a time when the original closure order has expired as they are during the currency of that closure order. We recommend a clarification of this wording.*

## CHAPTER 10: THE NIGHT-TIME ECONOMY

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### Introduction

437. Over the past few decades many UK cities have seen considerable growth in the night-time economy (NTE)—businesses and industries that stay open late into the night and early in the morning. Following the Licensing Act’s liberalisation of 24-hour licences, the licensed trade has accounted for a large share of this growth. According to the Department for Communities and Local Government, the NTE today accounts for 10–16% of UK town centre employment (and an even higher proportion in London), and contributed over £1 billion in business rates in 2013/14.<sup>401</sup> The Night Time Industries Association, a recently formed industry group representing the NTE, has claimed that the NTE as a whole is worth £66 billion.<sup>402</sup>
438. One innovation contained within the Act, and one of the most controversial at the time of its enactment, was a provision allowing premises to apply for 24-hour alcohol licences. While the development of the NTE was certainly influenced by this legislative shift, it is clear that the 24-hour licence is a relatively minor phenomenon—in March 2016, there were only around 8,300<sup>403</sup> 24-hour licences (representing 3.95% of all premises licences). Of these, the great majority (74%) were held by supermarkets or hotel bars, with only 900 (11%) held by pubs, bars and nightclubs. The majority of on-trade licensees who wished to extend their businesses into the NTE have chosen instead to apply for more moderate extensions to their terminal hours. While records are not routinely kept as to the number of late-opening licences, as opposed to 24-hour licences, research conducted by the Department for Culture, Media and Sport in 2007 showed that on average, on-licensed premises had extended their opening hours by 21 minutes.<sup>404</sup>
439. There was a considerable divergence in opinion among respondents as to the opportunities and challenges associated with the NTE. Despite the growth in the NTE in many of the UK’s largest towns and cities, many witnesses representing the licensed trade believed that the NTE was being stymied by a range of factors. Fabric Life Limited, who run the Fabric nightclub in central London, pointed to the halving of nightclubs across London in the past decade as a reason to be concerned for the capital’s NTE. They told us that:
- “there is an increasing perception in the night time industry that Police are seeking a diminution in the number of venues, and particularly nightclubs, not because closure of the venues is genuinely necessary but as an answer to their diminishing resources. Further, this perception is leading, and will continue to lead, to an unwillingness to invest, and reinvest, in nightclubs so hastening their demise.”<sup>405</sup>
440. The Heart of London Business Alliance similarly believed that over-zealous regulation, and an unwillingness on the part of licensing authorities to respect the liberalising aspects of the Act, threatened to harm the NTE. They argued that “if new licences are blocked and little flexibility is shown when

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401 Written evidence from Night Time Industries Association ([LIC0100](#))

402 *Ibid.*

403 Home Office licensing figures are rounded to the nearest 100.

404 In practice, they found the majority of on-trade premises were continuing to close at 11pm, and those that did tended to extend their hours by half an hour or one hour.

405 Written evidence from Fabric Life Limited ([LIC0157](#))



determining amendment applications, the evening and late night economy will fail to keep pace with the demands of our global, 24 hour city in the medium term.” They were similarly critical of what they saw as a tendency by local authorities to focus overly on the negative aspects of the NTE, such as crime, disorder and nuisance.<sup>406</sup>

441. However, local residents that we heard from were critical of the NTE, and believed far more needed to be done to regulate and manage its impact on residents. One residents’ association in north London reported that:

“... the effect of this Night-Time Economy (NTE) on residents has been catastrophic for those living near the main road and in the two roads used by late-night revellers to make their way home or to the overground railway. On summer nights in particular, residents suffer from the noise of shouting and swearing, banging of car doors and loudly playing car radios, urination and vomiting in the street (and front gardens). Often, after closing time, the party is continued on the pavement outside residents’ houses. Residents who can, have moved to a room in the back of their houses; others have installed double glazing. Neither solution is completely successful in cutting out the noise of the revellers.”<sup>407</sup>

442. In particular, they and others argued there was insufficient funding and infrastructure available for handling the NTE and for mitigating its impact on residents. The same residents’ association noted that “since the 2003 Licensing Act, the NTE has grown exponentially, but the infrastructure needed to contain it—policing, street cleaning, lavatory facilities, monitoring and decision-making by the Council—has remained virtually unchanged.” They felt that, while “huge sums accrue to the venues, the financial burden lies with the Councils and the NHS”.<sup>408</sup>

443. While measures like the Late Night Levy<sup>409</sup> had been a “first step to correct the balance”, fundamentally, underfunded local councils could not be expected to support and promote the late night economy.<sup>410</sup> Indeed, many respondents were highly critical of the Licensing Act 2003’s provisions for 24-hour licences, and believed a reversion to blanket closing times should be considered. As one councillor from Bristol put it, “the Licensing Act 2003 seemingly ignored the costs of enforcement, harm and tidying up. In these times of austerity, society can’t afford the luxury of the 2003 Act.”<sup>411</sup>

444. We have considered a range of measures aimed both at promoting the NTE and at mitigating and regulating some of its more harmful aspects. These include night czars, the recently opened Night Tube in London, as well as measures such as the Late Night Levy and Early Morning Restriction Orders, which have respectively aimed to tax and curtail the NTE in places where it has generated problems.

### *Night Czars and Night Mayors*

445. In 2014 Amsterdam created the first ‘night mayor’, a role which involves managing and improving relations between businesses in the NTE, local

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406 Written evidence from Heart of London Business Alliance ([LIC0128](#))

407 Written evidence from Harmond, Clarence, Hartland Residents Association ([LIC0033](#))

408 *Ibid.*

409 See paragraphs 473–505.

410 Written evidence from Harmond, Clarence, Hartland Residents Association ([LIC0033](#))

411 Written evidence from Councillor Clive Stevens ([LIC0077](#))

authorities and local residents. Since then Paris, Toulouse and Zurich have implemented their own versions of this scheme, and in November 2016 the London Mayor's Office appointed Amy Lamé as London's 'Night Czar' to perform a similar role.

446. We were very keen to hear about Ms Lamé's plans for the NTE of London, and indeed were assured a number of times by an official of the London Mayor's Office that we would be able to question her on the subject. We regret that this appearance did not, however, materialise, and we received no evidence, in person or in writing, from the London Night Czar herself. After further correspondence with the Mayor's Office, we received a response from the Mayor, Sadiq Khan, in which he noted that, as the Night Czar's role "is part-time", and due to a "long-standing and unavoidable commitment", she could not attend to provide evidence on 6 December.<sup>412</sup> We would like to place on record that we did provide the Night Czar with several possible dates on which she could have given evidence, which were all declined.
447. The Mayor's letter also informed us of the forthcoming appointment of a Chair of London's Night Time Commission. Philip Kolvin QC has now been appointed to this post, and we have been informed that he and the Night Czar will work "hand-in glove to support the development of London's night time economy across all boroughs".<sup>413</sup> Mr Kolvin's appointment unfortunately came too late for us to be able to take evidence from him in that capacity.
448. It remains unclear to us what distinction, if any, exists between these two roles. In written evidence subsequently received from the London Mayor's Office, we were informed that "the Chair will develop and lead partnerships with key stakeholders at a London-wide level", a role performed by Night Mayors in Amsterdam and elsewhere.<sup>414</sup>
449. Nevertheless, we were informed that together, the Night Czar and the Chair of the Night Time Commission will:
- "... work with the Mayor and his Deputy Mayors to ensure a well-planned and strategic approach as London develops into a genuine 24-hour city. They will ensure that all stakeholders have a strong voice in the development of policy for London's night time economy ...
  - develop, promote and articulate a vision for London as a 24-hour city. They will publish a roadmap setting out how the vision will be implemented ...
  - create a better understanding across all sectors of the challenges and opportunities for London's night time economy."
450. **We believe that the appointment of the Night Czar and other champions of the night time economy (NTE) has the potential to help develop London's NTE and ease the inevitable tensions that arise between licensees, local authorities and local residents. We believe that greater transparency should be expected of these roles if they are**

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412 Letter from Sadiq Khan to Baroness McIntosh of Pickering, dated 5 December 2016: <http://www.parliament.uk/documents/lords-committees/Licensing-Act-2003/Mayor%20of%20London%20to%20Chairman%20051216.pdf>

413 Written evidence from Mayor of London ([LIC0173](#))

414 *Ibid.*

**to secure the co-operation and trust of key parties in London’s NTE.  
In time Night Mayors may also offer a model to other cities in the UK.**

**Early Morning Restriction Orders**

451. Early Morning Restrictions Orders (EMROs) are powers brought in by the Police Reform and Social Responsibility Act 2011,<sup>415</sup> allowing local authorities to issue a blanket ban on premises opening during a period beginning at or after midnight and ending at or before 6am. They can be applied on particular days of the week, or different time periods on different days of the week, and can be applied to the whole or any particular part of a local authority area.
452. The section 182 Guidance described their intention as addressing “recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises”.<sup>416</sup> Although at least two proposals for EMROs have been made, in Hartlepool and Blackpool, both of these attempts failed, and so far no EMROs have been or are currently in operation.<sup>417</sup>
453. During our inquiry, no one we heard from believed EMROs were implementable in their current form, and while a minority of respondents believed that some form of EMRO-style power was still desirable, a substantial majority of respondents believed them to be fundamentally wrong in principle.
454. A relatively small minority of evidence we heard insisted that the basic assumption behind EMROs—that local authorities should be able to issue a blanket ban on early morning opening hours if they feel it necessary—was valid, and that it was primarily poor implementation of the policy, and the vehement opposition from industry, which had led to its failure.
455. The Alcohol Health Alliance felt that the lack of “a workable Early Morning Restriction Order” was a “clear strategic failing within the Act”, and that “restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs”. In their view there would be widespread demand from local authorities and police if a better policy was devised.<sup>418</sup> Jon Foster of the Institute of Alcohol Studies struck a similar note when he argued that “police and local authorities are keen on having a lever they can realistically pull” to reduce early morning opening hours, but that the “the gap between legislation and implementation is huge”.<sup>419</sup>
456. Broxtowe Borough Council pointed to the fact that introducing an EMRO is a “long, drawn out process when action may be needed in a more prompt manner”, which could be off-putting to local authorities.<sup>420</sup> Along with the

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415 A form of EMRO was added to the Licensing Act 2003 by the Crime and Security Act 2010, but the provisions were never commenced, and were repealed and replaced by the Police Reform and Social Responsibility Act 2011 (with modifications to allow them to cover a longer period each night, and to be introduced with a lower evidential threshold).

416 Home Office, *Revised Guidance issued under section 182 of the Licensing Act 2003* (March 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418114/182-Guidance2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418114/182-Guidance2015.pdf) [accessed 10 March 2017]

417 Written evidence from John Gaunt & Partners ([LIC0054](#))

418 Written evidence from Alcohol Health Alliance UK ([LIC0078](#))

419 [Q 46](#) (Jon Foster, Institute of Alcohol Studies)

420 Written evidence from Broxtowe Borough Council ([LIC0138](#))

Local Government Association, they suggested that the proposed Group Review Intervention Powers, should they be introduced, might be more effective, although as we have noted,<sup>421</sup> these are not without their problems as well. The LGA also claimed that as matters currently stood, “the overall administrative burden is probably still less” for conducting multiple licence reviews against problem premises in an area than it was to introduce an EMRO, “with its requirement for a full hearing and the amount of information industry has shown itself willing to provide in those circumstances, which has swamped councils and limited their ability to effectively scrutinise for accuracy all the information available to them”.<sup>422</sup>

457. Several respondents noted that opposition to EMROs from industry, particularly when attempts were made to introduce them in Blackpool and Hartlepool, had dampened enthusiasm for further attempts elsewhere. Alcohol Research UK noted that the Association of Licensed Multiple Retailers (ALMR) had set up a “fighting fund to challenge any council that proposed introducing an EMRO, and after the successful high-profile challenges in Hartlepool and Blackpool, no further EMROs were introduced.” They suggested that this “demonstrated the extent to which trade actions at local level can derail policies established by central government, and follows an established historical trend”.<sup>423</sup>
458. Even Gerald Gouriet QC, who acted on behalf of the ALMR in opposing the introduction of an EMRO in Blackpool, believed that EMROs still had some potential, which had been “insufficiently recognised by local authorities”. This was, he noted, partly because Blackpool had seemed “tailor-made for an EMRO”, and the subsequent failure to introduce one there had “reverberated too strongly around the country”. He suggested that the main problems with EMROs in their current form were the “costs of consultation and subsequent hearings, together with fears as to appellate costs”, which had made local authorities “disinclined to take advantage of this useful tool”.<sup>424</sup>
459. However, the majority of respondents not only believed that EMROs were fundamentally unworkable, but also opposed their existence in principle. The staunchest opposition was voiced by representatives of licensed premises. Admiral Taverns, for example, stated emphatically that they did not believe them to be “fair and/or necessary”,<sup>425</sup> and this view was shared by nearly all industry representatives. Reba Danson, of the Deltic Group of nightclubs, reflected the views of many in industry when she described them as part of a tendency to apply “a blanket ‘catch all’ approach rather than providing an effective and site specific licensing and police service”.<sup>426</sup>
460. The powers were also not popular among many local authorities and some police forces. Birmingham City Council reflected the views of many local authorities when they described EMROs as a “draconian measure [which] would blight a locality, identifying it as a place where crime and disorder were out of control”. Cheshire East Council explained that by closing all premises at a given time, the “financial risk” that EMROs posed to the late

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421 Paragraphs 311–316

422 Written evidence from LGA ([LIC0099](#))

423 Written evidence from Alcohol Research UK ([LIC0022](#))

424 Written evidence from Gerald Gouriet QC ([LIC0056](#))

425 Written evidence from Admiral Taverns ([LIC0124](#))

426 Written evidence from Reba Danson ([LIC0125](#))

night economy and associated businesses “may be prohibitive”.<sup>427</sup> They, like many other local authorities, believed there were “sufficient tools in the Licensing Act to deal with problem premises without resorting to having to apply early closing times to a group of premises”.<sup>428</sup> Sussex Police noted that both EMROs and Late Night Levies “have negative connotations in dealing with late night issues, rather than a potential for a positive resolution”.<sup>429</sup>

461. Hackney Borough Council pointed out that before EMROs there had been the even more abortive Alcohol Disorder Zones, introduced by the Violent Crime Reduction Act 2006. While these had been brought into force in 2007, no council ever introduced one, and they were repealed by the Police Reform and Social Responsibility Act 2011. They believed that, as with Alcohol Disorder Zones, authorities would look for “more proportionate and pragmatic approaches to tackling problem areas”.<sup>430</sup>
462. When questioned about this, Sarah Newton MP replied that EMROs were still “quite a new measure”, but accepted that there “has not been a big uptake of them yet” and that there were “some issues around the practicalities” of implementing them. Nevertheless, she argued that the process for implementing them had been “streamlined”, and she hoped that “improvements to the process that we have put in by consulting licensing authorities will enable them to be used more often”. It was her understanding that “the aspects of the processes that were identified as problematic have been addressed”.<sup>431</sup>
463. As a result of a consultation process conducted by the Home Office on how to make EMROs more effective, the previous Government amended secondary legislation in October 2014 to allow paperwork to be provided in electronic format. Previously, licensing authorities were required to send by post paper copies of all representations made, to all those who made them, 10 days before an EMRO hearing. The amended regulations reduced the paperwork required for hearings by making electronic dissemination the default for EMROs.<sup>432</sup> In October 2014 the Home Office also revised the section 182 Guidance to:
- include a process flow chart setting out the stages to implementing an EMRO;
  - clarify circumstances where a proposed EMRO can be changed after consultation without re-consulting;
  - expand on what areas could do before consulting, such as holding informal discussions with partners;
  - provide more information on what sorts of evidence could be relevant in considering the introduction of an EMRO.<sup>433</sup>
464. However, given that more than two years have passed since these changes were made, and no further EMRO consultations have been attempted, it

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427 Written evidence from Cheshire East Council ([LIC0039](#))

428 Written evidence from Birmingham City Council Licensing and Environmental Health ([LIC0141](#))

429 Written evidence from Sussex Police ([LIC0042](#))

430 Written evidence from London Borough of Hackney ([LIC0136](#))

431 [Q 216](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

432 Supplementary written evidence from Home Office ([LIC0175](#))

433 *Ibid.*



must be concluded that these changes have not been successful. While they are likely to make the process of implementing an EMRO easier, they do not address the fundamental issue that most councils appear not to want such draconian measures, and that they are fundamentally in opposition to the liberalising spirit of the Licensing Act.

465. All the evidence we have received has made clear that EMROs have proved impossible to implement, and may indeed prove harmful to any area in which they are implemented. The majority of local authorities we heard from were unenthusiastic towards them both in principle and in practice, and on the few occasions where they have been considered, they have subsequently been withdrawn under threat of legal challenge. The failure of their precursors, Alcohol Disorder Zones, suggests this approach may well be fundamentally unworkable in practice.
466. ***We believe it is appropriate that no Early Morning Restriction Orders have been introduced and we recommend that, in due course, the provisions on EMROs should be repealed.***

*The Night Tube in London*

467. 2016 saw the opening of the Night Tube service in London, with London Underground operating night-time services on Friday and Saturday nights on certain lines. This has significantly increased transport options to and from London's licensed premises, and Transport for London recently estimated that it could add £360 million to London's night time economy over the next 30 years.<sup>434</sup>
468. Several respondents argued that the developing Night Tube service should be reflected in licensing arrangements, with later operating hours for licensed premises. For example, Heart of London Business Alliance argued:
- “With the arrival of the night tube on Fridays and Saturdays providing more effective transport, we believe there is greater scope for longer operating hours that recognise and support the late night economy”.<sup>435</sup>
469. Alan Miller, of the Night Time Industries Association, told us that the “the 24-hour Tube is an enormous contribution to London, and it will bring huge benefits.” In particular, he emphasised the Night Tube's more efficient capacity for dispersing crowds throughout the night, as compared to night buses and taxis, which would bring advantages to late night revellers and local residents alike. Taking advantage of this, however, required a more open-minded approach to 24-hour licences:
- “If authorities are minded to provide 24-hour licences, or tiered licensing, it can be commensurate with the way the night Tube works. You can have different operational times throughout the day and night ... It provides a safe and sensible mechanism. Where there are questions about noise, dispersal is far quicker; people can be moved much quicker on the train and underground.”<sup>436</sup>

434 Transport for London, ‘The Night Tube’: <https://tfl.gov.uk/campaign/tube-improvements/what-we-are-doing/night-tube?cid=nighttube> [accessed 10 March 2017]

435 Written evidence from Heart of London Business Alliance (LIC0128)

436 Q 184 (Alan Miller, Night Time Industries Association)

470. Peter Marks, CEO of the Deltic Group of nightclubs, broadly agreed with this, though he also noted that by boosting London's NTE there was likely to be a knock-on impact on the night-time economies of nearby suburbs and towns, such as Uxbridge. He observed that:

“It has happened in Manchester. In effect, Manchester is like London; the centre of Manchester has trams running all night from all the surrounding towns, such as Rochdale, Bury, Eccles and Ashton-under-Lyne. Those towns have died. It is fantastic for Manchester city centre but bad for the areas around it. There will be some of that here, but I agree that on the whole it is a good thing, and it has certainly helped with dispersal and so on.”<sup>437</sup>

471. However the Covent Garden Community Association expressed concerns about the Night Tube, and believe it further justifies the need for stronger measures to address cumulative impact within the Licensing Act:

“We are also concerned about the impact of other changes in the environment on the ability of the Act to maintain the necessary balance. For example the introduction of the Night Tube in London may well have a very detrimental impact on the residential communities in the West End if the result is to encourage people to stay later and so allow the noise and anti-social behaviour to extend even further into the morning. This change, which is not controlled by the Licensing regime, could be a disaster for our area in terms of maintaining the balance we have managed to achieve so far. We believe that the ability to review licences based on their cumulative impact in an area needs to be considered as an option to address this type of issue”.<sup>438</sup>

472. **While we acknowledge the concerns of local residents, we believe that overall the Night Tube is likely to have a positive impact for London's late night licensed premises, their staff, and local residents. Not only will it provide a welcome boost to London's night-time economy, which must be allowed to grow if London is to continue to prosper as a global city in the 21st century, but it may well also bring advantages for residents by dispersing crowds more effectively and efficiently.**

### Late Night Levies

473. The Late Night Levy (LNL) was introduced by the Police Reform and Social Responsibility Act 2011, and provides licensing authorities with the power to raise money from late-opening alcohol suppliers to go towards policing and managing the NTE. If a local authority chooses to introduce a LNL, it must be applied across the entire local authority area, although the local authority can choose the period between midnight and 6am to which it will apply. Although the fees are set nationally (see Table 1), the local authority may also choose to apply exemptions and reductions from a list set out by regulations.
474. Since their creation, only nine of 350 local authorities in England and Wales have introduced a LNL, while 13 others issued consultations about the introduction of a LNL, but did not subsequently introduce one. In January 2017 the London Borough of Tower Hamlets approved the implementation

437 [Q 184](#) (Peter Marks, Chief Executive, The Deltic Group)

438 Written evidence from Covent Garden Community Association ([LIC0118](#))

of a LNL, and this proposal is now undergoing a three-month public consultation, with the council proposing to bring it into force in June 2017.<sup>439</sup>

**Table 1: Late Night Levy fees**

Rateable Value	Annual Levy	Cost per week
Band A (up to and including £4,300)	£299	£5.75
Band B (£4,301 to £33,000)	£768	£14.76
Band C (£33,001 to £87,000)	£1,259	£24.21
Band D (£87,001 to £125,000)	£1,365* (£2,730)	£26.25 (£52.50)
Band E (£125,001 and above)	£1,493* (£4,440)	£28.71 (£85.38)

\* Signifies premises which fall within x2 or x3 fee multipliers (see Chapter 12 for further details).

475. There was a greater diversity of opinion as to the merits of LNLs as compared with EMROs. Many industry and business interests have opposed them in principle, as additional taxes levied unfairly on often already struggling businesses. For example, Admiral Taverns told us that LNLs “fail to allocate responsibility for poorly managed premises and impose a disproportionate cost burden on well-run small businesses for what may be a desire to have just an extra half hour’s trading time beyond midnight”.<sup>440</sup> They went on to argue that:

“LNLs are simply another direct tax on small local businesses who have little choice but to pay approximately £700 or risk losing trade and regular custom by cutting back their hours. By comparison to the cost of a premises licence on many small pubs of £180 that cost is disproportionate. There will also be instances where licensees have paid perhaps £2,000 on council fees and solicitors and newspaper fees for a variation which they are now having to pay an additional £700 a year to supplement.”<sup>441</sup>

476. Many other representatives of business agreed with Admiral Taverns that the LNLs simply served as an additional tax and source of revenue for local authorities, which did not effectively target the premises which were most responsible for causing problems. Business in Licensing demonstrated this by giving the example of one local authority which “sought to bring in a levy on any premises open after 1am which meant that the majority of vertical drinking establishments in the town centre did not pay, but the small 24 hour shop outside the town centre was hit with a levy in excess of £1500”.<sup>442</sup>

477. CAMRA also noted the “disproportionate effect that the imposition of a levy has on smaller, community-focused venues as opposed to nightclubs and large bars”. They noted that many community pubs could not easily

439 Tower Hamlets Council, ‘Late Night Levy’: [http://www.towerhamlets.gov.uk/lgnl/council\\_and\\_democracy/consultations/past\\_consultations/Late%20Night%20Levy.aspx](http://www.towerhamlets.gov.uk/lgnl/council_and_democracy/consultations/past_consultations/Late%20Night%20Levy.aspx) [accessed 10 March 2017]

440 Written evidence from Admiral Taverns (LIC0124)

441 *Ibid.*

442 Written evidence from Business in Licensing (LIC0140)

afford the levy, and therefore reduced their licensable hours in a way that larger operators were not forced to, thereby “reducing the availability of such premises after midnight and reducing overall levy revenue”.<sup>443</sup> Kuit Steinart Levy LLP made the similar observation that while the LNL did not “present a particular barrier to larger operators, particularly those with multiple sites”, they were concerned that it deterred “small, independent or start-up operators who may have something valuable to offer to the night-time economy”.<sup>444</sup>

478. George Dawson, President of the Working Men’s Club and Institute Union, also noted the detrimental impact that LNLs were having on working men’s clubs, pointing out that some clubs:

“... now have to do a variation, because six authorities decided to do the late-night levy. They get charged a late-night levy if the club premises certificate says, ‘until 2 o’clock’, even though they may not use it all the time, and they may use it on only two occasions in the whole year. Then they have to apply for a temporary event notice. The flexibility seems to be going from the idea of what was originally intended, but generally it is working well”.<sup>445</sup>

479. Punch Taverns also argued that the consultation process for introducing LNLs was not nearly as thorough and transparent as it should be. Having made submissions in relation to every LNL consultation held to date, they have come to believe that the submissions only served as “paid lip-service”, and that “the decision to impose a LNL has been pre-determined”. They further noted:

“There is currently no need for councils to publish their reasons for determining to adopt the LNL, which means there is little scope to challenge their decisions. Chelmsford stands out as an exception to this, where the levy imposed differed materially from that consulted on after responses were received”.<sup>446</sup>

480. The British Beer and Pub Association concluded that they were, in effect, “a step backwards to the previous 1964 Licensing Act ... effectively forcing pubs en-masse to limit their hours to a specific opening time, or be taxed to be able to open later”.<sup>447</sup>

481. There was only qualified support for LNLs from some local authorities and police forces, although a number believed they could be very useful if the means for implementing them were improved. The National Police Chiefs’ Council (NPCC), for example, told us that they would like to see an increase in the number adopted,<sup>448</sup> while the Local Government Association argued that they had been partially successful as they had helped address “the shortfall in income that otherwise prevents councils from taking forward innovative ideas”.<sup>449</sup>

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443 Written evidence from CAMRA ([LIC0121](#))

444 Written evidence from Kuit Steinart Levy LLP ([LIC0098](#))

445 [Q 166](#) (George Dawson, Union President, Working Men’s Club and Institute Union)

446 Written evidence from Punch Taverns ([LIC0087](#))

447 Written evidence from BBPA ([LIC0111](#))

448 [Q 134](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs’ Council)

449 Written evidence from LGA ([LIC0099](#))

482. However, hardly any respondents believed that LNLs were currently working as they should be, and some made suggestions for how they might be improved. Chief among these suggestions was to change how funds raised from LNLs could be spent, and how funds were divided between local authorities and police forces. Concerns about how the funds were spent by police centred both on *where* the money would be spent, as most police force jurisdictions in England and Wales are (often considerably) larger than local authority boundaries, and at what time of the day the additional policing funded by the LNL would be provided.
483. Leeds City Council reflected the views of many local authorities when they observed that one reason for “the hesitancy to impose a late night levy” on the part of local authorities was a “lack of oversight” over where the levy would be spent by police. They reported that in their case, they received “verbal confirmation that the levy raised in Leeds would be used in Leeds to provide additional policing, but no commitment was provided in a written agreement”.<sup>450</sup> Birmingham City Council, which has not introduced a levy, also pointed to the fact that “there is no obligation upon police forces to spend the levy on the night time economy or within the area for which it was collected. Levy collected in Birmingham could, for instance, be spent anywhere in the West Midlands. The police could in fact spend it on anything of their choosing”.<sup>451</sup>
484. This concern was also voiced by industry representatives, who complained that it was often unclear to them whether LNL funds were being used to increase late night policing in their areas. Kuit Steinart Levy LLP, who provide legal representation to many licensees, told us that their clients “who trade nationally do not report increased visibility in terms of policing in the towns and cities where they pay the levy. It seems therefore that it is not sufficiently evident where the money is spent”.<sup>452</sup> Poppleston Allen, who also provide legal services to licensees, similarly observed that:
- “In one Levy area of which we are aware, the Levy pays for two Community Support Officers who stop their shift at midnight, the very time when the Levy hours kick in. Additionally, in all likelihood whilst they are working before midnight, they will be patrolling the BID [Business Improvement District] area (which is the busy later-evening area of the city concerned) and premises in the BID area are actually exempt from the Levy. The BID exemption is a very important exemption for licensed operators who contribute financially to it but this example does raise a question of whether the revenues arising from the Levy are being directed in the right way”.<sup>453</sup>
485. Even the NPCC noted problems in this area, when they told us that “the reason it has not been taken up is that we have not been able to persuade the other authorities that we will spend it on the night-time economy. There is naturally concern that it may go to other areas of policing.”<sup>454</sup> They also pointed out, however, that funds allocated to the police now go to Police and Crime Commissioners, rather than straight to the chief constable of a particular force.

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450 Written evidence from Leeds City Council ([LIC0034](#))

451 Written evidence from Birmingham City Council Licensing and environmental health ([LIC0141](#))

452 Written evidence from Kuit Steinart Levy LLP ([LIC0098](#))

453 Written evidence from Poppleston Allen ([LIC0105](#))

454 [Q 136](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs' Council)



486. Both the NPCC and the Police Superintendents' Association however disagreed with any attempt to allocate LNL-raised funds purely for 'night-time' policing in a strict sense, as they argued that the NTE in turn impacted upon other aspects of policing. Assistant Chief Constable Rachel Kearton of the NPCC pointed out that:

“... late-night hours and the night-time economy extend over the night time, but the policing impact is often picked up the next morning when people are sober. Witness statements can be taken, victims come forward, and so on. People find damage on premises that they own next door to licensed premises, or whatever it might be. First and foremost, we are looking at the totality of the impact of alcohol and what may come from licensed premises”.<sup>455</sup>

487. **The Late Night Levy was introduced in large part to require businesses which prosper from the night time economy to contribute towards the cost of policing it. Yet the evidence we have heard suggests that in practice it can be very difficult to correlate the two with any degree of precision, which contributes to the impression, held by many businesses, that the levy is serving as a form of additional general taxation, and is not being put towards its intended purpose.**

*Division of LNL funding between police and local authorities*

488. Another particular problem emphasised many times in the evidence we received is the statutory requirement<sup>456</sup> that at least 70% of the funds raised through an LNL must be allocated to the police, with 30% or less retained by the local authorities. While police are free to spend their share of the money however they see fit, limitations are placed on local councils, which restricts them to spending these funds on measures specifically related to tackling alcohol-related crime and disorder, and on services connected with the management of the NTE.

489. Cheshire East Council, when explaining their reasons for not introducing an LNL in their area, pointed to this split, and believed that the Council would have “no control over where the [money allocated to the police] would be spent”, which could create a “reputational risk” to the Council.<sup>457</sup> Birmingham City Council also highlighted that while “the police could in fact spend it on anything of their choosing”, they as a Council were limited to spending money on “tackling alcohol related crime and disorder and services connected to the management of the night time economy (e.g. taxi marshal schemes)”.<sup>458</sup> Cornwall Council's Licensing Authority concluded it was “unacceptable that most of the income raised would go to the police but not necessarily be ploughed back into addressing the costs arising from late night activities”.<sup>459</sup>

490. Updated Home Office guidance from 2015 notes that while 70% of LNL funds should still be allocated to the police, Police and Crime Commissioners may use their discretion, in discussion with local councils, to hand a proportion

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455 [Q 134](#) (Assistant Chief Constable Rachel Kearton, National Police Chiefs' Council)

456 Police Reform and Social Responsibility Act 2011, [section 131\(4\)](#)

457 Written evidence from Cheshire East Council ([LIC0039](#))

458 Written evidence from Birmingham City Council Licensing and Environmental Health ([LIC0141](#))

459 Written evidence from Cornwall Council Licensing Authority ([LIC0069](#))

back to local councils.<sup>460</sup> However, the default expectation remains that funds should be split on a 70/30 basis between police and local authorities, and only a small minority of local council respondents appeared to be aware of this possibility. Section 131(5) of the Police Reform and Social Responsibility Act 2011 allows for the amendment of the 70/30 split, but this has so far not been used.

491. The London Borough of Hounslow was one of the few councils that appeared to be aware of the possibility for renegotiating the split. They intended to investigate the introduction of a Late Night Levy, and hoped “that the funds raised will greatly assist us in providing services to police the night-time economy”. Nevertheless, they also stated that:

“A condition of introducing a levy will be that an agreement is reached with the police that the funds raised from the levy will not be split 70-30 with the police. The guidance issued by the Home Office in relation to Late Night Levy’s permits this at Section 1.41. We feel that the current requirement that police authorities should take 70% of the funds raised was ill thought through and has prevented many local authorities (including ourselves until now) from considering a levy. Local Authorities are best placed to allocate the money raised and could choose to do so over a range of Council provided services such as: licensing enforcement, CCTV controllers, community safety, street cleansing and pollution control.”<sup>461</sup>

492. Even a representative of Derbyshire Police agreed that the 30% allocated to local councils “is often too low when councils look at administration costs. This figure is often not enough to be effective in reducing crime in the night time economy and I am not convinced that this extra funding is used to directly police the night time economy which is the reason it was brought in.”<sup>462</sup>

#### *Further changes to LNLs under the Policing and Crime Act 2017*

493. In the course of our inquiry we learned that the Government was planning amendments to the Licensing Act 2003 through the Policing and Crime Bill. Among the proposed changes were provisions which would make levies similar to Cumulative Impact Policies, allowing councils to target them at particular problem zones such as city centres, without applying them elsewhere. The changes would also allow councils to apply the levy to late night refreshment providers, who are currently exempt, and require local authorities to publish information on how funds raised by the levy funds are spent. The intention behind these changes is to make the Late Night Levy more flexible, more transparent, and easier to apply in practice.

#### *‘Zoning’ LNLs*

494. On the subject of ‘zoning’, a number of respondents were critical of the requirement that an LNL had to be applied across an entire local authority area, rather than being applicable in a more targeted way, as, for example, a CIP or EMRO is. Greater Manchester Combined Authority told us that

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460 Home Office, *Amended guidance on the late night levy* (24 March 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416092/Late\\_Night\\_Levy\\_-\\_new\\_guidance\\_as\\_at\\_24\\_March\\_2015\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416092/Late_Night_Levy_-_new_guidance_as_at_24_March_2015_final.pdf) [accessed 10 March 2017]

461 Written evidence from London Borough of Hounslow ([LIC0025](#))

462 Written evidence from Derbyshire Police ([LIC0028](#))

they believed “the ability to ‘zone’ the levy, rather than applying it to the whole of a local authority’s area, would allow authorities to be more selective in the areas required to pay the levy—‘making the polluters pay’ rather than charging every relevant premises in an authority’s area”.<sup>463</sup> A number of other councils and police forces suggested that they had not introduced a LNL due to a significant divide between town centre premises, which tended to cause most of the problems associated with the late night economy, and suburban or rural premises, which generally did not, but would still have to contribute to a levy.<sup>464</sup>

495. Covent Garden Community Association also argued that, at the very least, it should be possible to align LNL areas with CIP areas, “and only on premises which were likely to have a negative impact, such as bars, clubs and off-licences and not on restaurants”.<sup>465</sup>

*Removing exemptions for Late Night Refreshment*

496. ‘Late-night refreshment’ is a licensable activity created by the Licensing Act 2003, comprising the sale of hot food and/or hot drink between the hours of 11pm and 5am.<sup>466</sup> This category was created on the basis that premises offering these products, which include late-opening takeaway and fast food shops, could contribute to crime, disorder and disturbance associated with premises licensed to sell alcohol, even when they did not serve alcohol themselves.<sup>467</sup> As of March 2016, there were 86,500 premises licensed to provide late night refreshment.<sup>468</sup>
497. Councillor Clive Stevens, of Bristol, informed us that while nightclubs could be a “catalyst” for public nuisance, in the early hours of the morning it was often large groups of people congregating around takeaways which were causing a greater public nuisance for local residents.<sup>469</sup> Hinckley and Bosworth Borough Council, Havering Borough Council, and Leicester, Leicestershire and Rutland Licensing Forum believed that LNLs should apply to late night refreshment providers as well as those providing alcohol.<sup>470</sup>
498. We have heard evidence from members of the late night food industry, who are opposed to plans to extend the LNL to cover their own businesses, where previously they were exempt. When we asked Ibrahim Dogus, of the British Kebab and Retail Awards, about his view on the planned extension of the LNL to late night refreshments, he responded that:

“Many of our smaller restaurants and takeaways operate on very small margins. With business rates, especially in London, likely to increase

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463 Written evidence from Greater Manchester Combined Authority ([LIC0103](#))

464 Written evidence from Gloucestershire Licensing Officer’s Group ([LIC0101](#)); Durham Constabulary ([LIC0045](#)); LGA ([LIC0099](#)); South Tyneside Council ([LIC0027](#))

465 Written evidence from Covent Garden Community Association ([LIC0118](#))

466 Home Office, *Guidance on the licensing of late night refreshment* (October 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/464869/Guidance\\_on\\_the\\_licensing\\_of\\_late\\_night\\_refreshment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464869/Guidance_on_the_licensing_of_late_night_refreshment.pdf) [accessed 10 March 2017]

467 There are, however, numerous exemptions from requiring a licence for late-night refreshment, which the Home Office have detailed in guidance: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/464869/Guidance\\_on\\_the\\_licensing\\_of\\_late\\_night\\_refreshment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464869/Guidance_on_the_licensing_of_late_night_refreshment.pdf) [accessed 10 March 2017]

468 This figure will likely include some premises licensed to serve alcohol as well, as Home Office statistics do not give figures for premises licensed only to serve late-night refreshment.

469 Written evidence from Councillor Clive Stevens ([LIC0077](#))

470 Written evidence from Hinckley & Bosworth Borough Council ([LIC0049](#)); Leicester, Leicestershire and Rutland Licensing Forum ([LIC0013](#)); London Borough of Havering ([LIC0068](#))

or double, this is going to impose a huge extra burden on those small businesses. Properly run restaurants and takeaways, which account for all their income and expenditure, will be paying business rates, VAT, income tax and national insurance for their employees. They are already contributing to meeting the costs of policing, safety and the cleaning of their areas.”<sup>471</sup>

499. Ultimately, he believed “there must be another way; there must be others who would be interested in contributing more to the cost”, and that it should not fall on late night refreshment vendors. Ron Reid, representing McDonalds, similarly pointed out that “a number of fees are levied, from business rates right through to the annual fees one has to pay to keep the licence, which are not inconsiderable”. In the view of McDonald’s, “well-run businesses should not have to pay an additional burden”.<sup>472</sup>

*General conclusions on changes to the Late Night Levy*

500. We were disappointed when we learned that the Government was planning to make such substantial changes to the Licensing Act before our Committee would have an opportunity to make recommendations on these matters. We appreciate that in some cases this was unavoidable, as some policies would have been formulated before our Committee was set up. This was not, however, the case with proposed amendments to the Late Night Levy, where the Government tabled new clauses and amendments only in September 2016. We believe it would have been more appropriate for the Government, instead of tabling these amendments three months after the Committee was set up, to have waited for the Committee to report its findings and conclusions, so that these could have been taken into account when formulating policy.
501. The Chairman of our Committee wrote to the Leader of the House on 2 November 2016, outlining this position, and asking for an assurance that the relevant provisions on the Late Night Levy would not be brought into force until after we had reported. **We have received from ministers, verbally and in writing, categorical assurances that the provisions of the Policing and Crime Act 2017 regarding Late Night Levies will not be implemented until the Government has considered and responded to the recommendations in this report.**
502. *Given the weight of evidence criticising the Late Night Levy in its current form, we believe on balance that it has failed to achieve its objectives, and should be abolished. However we recognise that the Government’s amendments may stand some chance of successfully reforming the Levy. We recommend that legislation should be enacted to provide that sections 125 to 139 of the Police and Social Responsibility Act 2011 and related legislation should cease to have effect after two years unless the Government, after consulting local authorities, the police and others as appropriate, makes an order subject to affirmative resolution providing that the legislation should continue to have effect.*
503. *If the Government, contrary to our recommendation to abolish the Late Night Levy, decides to retain it, we further recommend that*

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471 [Q 193](#) (Ibrahim Dogus, British Kebab and Retail Awards)

472 [Q 193](#) (Peter Marks, Chief Executive, The Deltic Group; Ron Reid, Shoosmith’s, on behalf of McDonald’s)

***Regulations be made under section 131(5) of the Police Reform and Social Responsibility Act 2011 amending section 131(4) of the Act, abolishing the current 70/30 split, and requiring that Late Night Levy funds be divided equally between the police and local authorities.***

504. Like all of our report, our consideration of the Late Night Levy is based on the evidence we received. None of that evidence suggested that there was any doubt about the lawfulness of LNLs. Plainly the Home Office had no such doubts, since they would not otherwise have proceeded with their amendments to the Policing and Crime Bill. However in Chapter 12<sup>473</sup> we explain, in the context of licensing fees, the possible impact of the EU Services Directive on a requirement that a licensee should pay any fee or levy over and above what is required to process the application.
505. ***The EU Services Directive is an additional consideration which could have implications for the legality of the Late Night Levy. If the Government, contrary to our recommendation, decides to retain the Late Night Levy, the Home Office should satisfy itself that any further action relating to the Late Night Levy complies with the EU Services Directive.***

**Business Improvement Districts and voluntary schemes**

506. The Committee has seen considerable evidence suggesting that Business Improvement Districts (BIDs) can achieve similar, and indeed often better, more flexible and more innovative results than Late Night Levies while also proving more acceptable to local businesses.
507. BIDs are partnerships between local authorities and local businesses which provide additional services or improvements to a particular area. In a BID area local businesses, which can include but are not limited to those licensed to sell alcohol, pay a form of levy. However, these funds can then be allocated in a far more flexible way and with a much greater degree of local consultation. For example, in some BID areas, such as Reading, there is a standard 1% levy on top of business rates which all businesses must pay, and a further 2% ‘night-time levy’ for licensed premises which open after midnight.<sup>474</sup> Funds from this night-time levy are ring-fenced for initiatives to promote the night-time economy.
508. There is also a greater element of democratic accountability in the way they are established—in England and Wales, after a proposal is made, a ballot is held for all non-domestic ratepayers in the BID area who would be liable for the levy, and must be approved by both a numerical majority and a majority by rateable value.<sup>475</sup> The BID is run by a managing board, which has free rein to make spending decisions, and seek additional income as it sees fit. After a set period, outlined in the proposal and not exceeding five years, the BID is wound up, although a further ballot for a new BID may then be held.
509. A number of respondents argued that BIDs were for this reason preferable to LNLs, and could produce more innovative solutions to the problems

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473 Paragraphs 573–583

474 Reading BID, ‘What is a Business Improvement District?’: <http://livingreading.co.uk/what-is-a-bid> [accessed 10 March 2017]

475 DCLG, *Review of Business Improvement Districts: Consultation* (March 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418008/BIDs\\_Consultation\\_Document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418008/BIDs_Consultation_Document.pdf) [accessed 10 March 2017]



associated with the Late Night Economy. The National Association of Licensing and Enforcement Officers described how “levies can only be introduced after midnight but all licensed premises contribute to the late night economy and the inherent issues prior to that time”. They believed that “a fairer system would follow Business Improvement District (BID) schemes whereby all premises would be involved in shaping and promoting the night time economy and contributing to the process”.<sup>476</sup>

510. Indeed, TLT Solicitors suggested that while LNLs had “re-framed the discussion in terms of who is responsible for causing the problems in the night time economy”, this had led to “increased interest in initiatives, such as Business Improvement Districts that are more flexible in terms of who pays the fee and who participates, as well as allowing for greater engagement from those paying.”<sup>477</sup> CAMRA concurred, observing that “a number of local authorities are turning away from late night levies and other cumulative impact policy set-ups to voluntary partnership arrangements such as business improvement districts”. It was their belief that this was a “very good development, which should be reflected in the Licensing Act if it is amended”.<sup>478</sup>
511. Several respondents drew attention to the case of Cheltenham. Admiral Taverns described how the city council, which was one of the first local authorities to introduce an LNL, “have now moved towards recommending a BID which allows any monies generated from all businesses in the area to be allocated to that area as the BID believes is necessary such as taxi marshals”.<sup>479</sup> Punch Taverns also made this point, and argued that “all authorities that have introduced the LNL and published accounts after the first year have been shown to have raised considerably less than they estimated in their consultation documents”.<sup>480</sup>
512. Even the Home Office acknowledged to us that “there are some local authorities that do similar things in this space but do not quite have a late night levy”. They gave us the examples of Dalston in Hackney, which has a voluntary levy, and Nottingham, which has a “night-time economy business improvement district” that works alongside a conventional LNL. They told us that “local authorities might think that some of these things serve their purposes a little better than the late night levy”.<sup>481</sup> In some local authority areas with a LNL, businesses which pay a BID levy receive a partial discount or full exemption from paying the LNL.
513. There are other, entirely voluntary schemes, which operate in a different way to BIDs, but which also seek to improve conditions and standards in the local night time economy. One of the foremost that the Committee heard about was Best Bar None, (BBN), which is a national award scheme, supported by the Home Office and the drinks industry, aimed primarily at promoting responsible management and operation of alcohol licensed premises through partnership working. Local Authorities can adopt and promote a BBN scheme in their area, with support from the organisation, and the initiatives which flow from it are intended to reduce the negative impacts

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476 Written evidence from National Association of Licensing and Enforcement Officers ([LIC0148](#))

477 Written evidence from TLT Solicitors ([LIC0112](#))

478 [Q 82](#) (Tim Page, Chief Executive, Campaign for Real Ale)

479 Written evidence from Admiral Taverns ([LIC0124](#))

480 Written evidence from Punch Taverns ([LIC0087](#))

481 [Q 14](#) (Andy Johnson, Head of Alcohol, Home Office)

of the night time economy, whilst improving the consumer's experience. Another initiative which the Committee heard about was the Purple Flag accreditation scheme, which recognises standards of excellence within towns and cities in managing the night time economy.

514. There was widespread support for such schemes among the industry, including CAMRA, the ALMR, the BBPA and SIBA, who saw them as a far better alternative to LNLs.<sup>482</sup> The Home Office also officially supports the BBN approach in particular, and more generally placed considerable evidence on voluntary partnerships in its Modern Crime Prevention Strategy of March 2016.<sup>483</sup>
515. Some local authorities, such as Telford and Wrekin Council and Watford Borough Council, also praised voluntary schemes as preferred alternatives to the LNL.<sup>484</sup> The LGA offered more muted support, noting that, while “the impact and quality of [the schemes] does vary”, they were generally “a welcome contribution” and ensured that “a partnership approach can be taken to improving standards and tackling any local issues”.<sup>485</sup>
516. These schemes were not, however, without their critics. Balance North East Alcohol Office claimed there was “not a single piece of academic, peer reviewed evidence that [these schemes have] a significant impact on crime and disorder”.<sup>486</sup> The Institute of Alcohol Studies argued the Modern Crime Prevention Strategy’s focus on voluntary schemes was “very poorly evidenced”, and Alcohol Research UK pointed out that they had, at most “largely undergone internal (and stakeholder-funded) evaluations only”.<sup>487</sup> They believed there was a “pressing need for robust independent evaluations of industry-led voluntary schemes—especially as they are regularly presented as alternatives to existing or potential legislation.”<sup>488</sup>
517. The British Medical Association went further, arguing that “any emphasis on partnership with the alcohol industry and self-regulation has, at its heart, a fundamental conflict of interest that does not adequately address individual and public health. The alcohol industry has a vested interest in the development of control policies and so it is essential that alcohol policies are developed independently of them.”<sup>489</sup>
518. **We welcome all the initiatives of which we heard evidence, including BIDs, Best Bar None, Purple Flag and others, and recognise the effort which goes into them and the potential they have to control impacts and improve conditions in the night time economy. We commend the flexibility which such schemes appear to offer, and the bespoke way in which they are developed to match the needs of their locality.**

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482 Written evidence from CAMRA ([LIC0121](#)), ALMR ([LIC0150](#)), BBPA ([LIC0111](#)) and SIBA ([LIC0093](#))

483 Home Office, *Modern Crime Prevention Strategy* (March 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509831/6.1770\\_Modern\\_Crime\\_Prevention\\_Strategy\\_final\\_WEB\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf) [accessed 10 March 2017]

484 Written evidence from Telford and Wrekin Council ([LIC0057](#)) and Watford Borough Council ([LIC0106](#))

485 Written evidence from LGA ([LIC0099](#))

486 Written evidence from Balance North East Alcohol Office ([LIC0023](#))

487 Written evidence from Institute of Alcohol Studies ([LIC0047](#)) and Alcohol Research UK ([LIC0022](#))

488 Written evidence from Alcohol Research UK ([LIC0022](#))

489 Written evidence from the British Medical Association ([LIC0041](#))

519. Following questioning on the subject, Sarah Newton MP told us she believed LNLs “should work in the same way as BIDs”. While she continued by stating that she was a supporter of BIDs, she believed there was:

“... flexibility in the new proposed arrangements to allow the police and crime commissioner to work with the area—the mayor of the town or city where the levy will be charged, the business improvement district, or the chamber of commerce if there is no business improvement district, and representatives of the community—to develop a plan for how they are going to spend that money”.<sup>490</sup>

520. *We welcome the initiative of local authorities such as Cheltenham which have abandoned Late Night Levies in favour of Business Improvement Districts. While recognising that local authorities cannot impose Business Improvement Districts in the same way that they can Late Night Levies, we recommend that other local authorities give serious consideration to initiating and supporting Business Improvement Districts and other alternative initiatives.*

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490 [Q 217](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

## CHAPTER 11: LIVE MUSIC

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### Introduction

521. Pubs and clubs have long been sites of music, entertainment and cultural activity in the England and Wales. Live music performances have been found to be one of the greatest draws of custom for pubs, with one in four publicans reporting increases in takings of between 25% and 50% on nights when they have live music compared to other nights. Pubs that provide music take on average 44% more money than pubs without music, rising to 60% more at the weekend.<sup>491</sup>
522. Alongside pubs which put on live music, there are also many venues which are primarily concerned with live music, but which also serve alcohol. In particular, this includes around 450 grassroots music venues (GMVs), smaller music venues with capacities of less than 1,000. With such venues providing many fledgling musicians with their first public performance platforms, they are described by the Music Venues Trust as the “start motor of the music industry engine”.<sup>492</sup>
523. UK Music, a group which campaigns and lobbies on behalf of the UK recorded and live music industry, has noted that the average spend on alcohol is significantly lower at these venues than at typical licensed premises, at £6.27 per head in 2015 compared with a national average of £15.30. However, they added that “the sustainability of grassroots music venues (GMVs) is intrinsically financially dependent upon the sale of alcohol” and other subsidiary trades such as trade in merchandise.<sup>493</sup> Operating music venues within London have shrunk by 35% in the past eight years. Restrictive licensing laws are often cited as a contributing factor in venue closures.<sup>494</sup>
524. From 1964 until the commencement of the Licensing Act 2003, live music performances were regulated by “music and dancing” licences, otherwise known as Public Entertainment Licences (PELs). This included a “two in a bar” exemption, which allowed licensed premises to put on live performances involving no more than two performers without requiring a PEL. This regulatory framework was widely disliked by licensees and musicians alike, and could be subject to peculiar interpretations, with councils sometimes even counting audiences that sang along against the two-person limit.
525. However, the Licensing Act 2003 effectively removed even this limited exemption. It created the licensable activity of “regulated entertainment” (see Box 8), requiring a premises licence for all classes of entertainment included within it, unless specific exemptions applied. A number of attempts were made to reduce the restrictions on small-scale live music performances, none of which were deemed very successful by performers, before the Live Music Act 2012 was introduced.

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491 Written evidence from the British Beer & Pub Association ([LIC0111](#))

492 [Q 197](#) (Mark Davyd, Music Venue Trust)

493 Written evidence from Music Venue Trust ([LIC0058](#))

494 Written evidence from UK Music ([LIC0096](#))

### Box 8: Regulated Entertainment

The following activities are defined as “regulated entertainment”:

- a performance of a play (but no longer for audiences up to 500 people);<sup>495</sup>
- an exhibition of a film;
- an indoor sporting event which takes place wholly inside a building and at which the spectators are accommodated wholly inside the building;
- boxing and wrestling;
- performance of live music;
- playing of recorded music;
- performance of dance;
- entertainment of a similar description to the above.

There are specific exemptions for film exhibitions for advertisement, information and education, and in museums and art galleries; music incidental to certain other activities; religious services and places of worship; garden fetes; and Morris dancing. Sexual entertainment venues are exempt, but only because they are regulated under the Local Government (Miscellaneous Provisions) Act 1982.

#### Live Music Act 2012

526. The Live Music Act took effect from 1 October 2012, and since 6 April 2015 also applies to recorded music, and covers larger audiences.<sup>496</sup> The Act disapplies licence conditions to the activities covered by the Act if the following criteria are satisfied:

- There is a premises licence or club premises certificate in place permitting ‘on sales’;
- The premises are open for the sale or supply of alcohol for consumption on the premises;
- Live or recorded music is taking place between 8am and 11pm and;
- If the live music is amplified or recorded, the audience consists of no more than 500 people.

527. Live music also ceases to be classed as ‘regulated entertainment’ if the above criteria are satisfied. The Live Music Act also creates a general exemption that live unamplified music provided anywhere will not be regarded as the provision of regulated entertainment if it takes place between 8am and 11pm, regardless of the number of people in the audience.

528. Determining the impact of the Live Music Act 2012 statistically is difficult, as its success may be indicated by a *decrease* in licence applications for live

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495 Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 ([SI 2013/1578](#))

496 Live Music Act 2012, Legislative Reform (Entertainment Licensing) Order 2014 ([SI 2014/3253](#))



music, as many premises no longer require them.<sup>497</sup> Alternatively, this may simply reflect a decreased interest among licensees in putting on live music performances.

### Box 9: Licensing trends associated with the Live Music Act 2012

- Over the first full year of the Live Music Act (March 2013–March 2014) there was a 1.3% increase in the overall number of licences authorising some form of regulated entertainment in premises in England and Wales.
- The same period saw a 1.5% decrease in the number of premises licences authorising live music, and a 5.9% decrease in the number of club premises certificates authorising live music.
- In the following two years (March 2014–March 2016), there was an overall decrease of 1.4% in premises licences authorising regulated entertainment, a 3.5% decrease in premises licences authorising live music.
- There was also a 20.2% increase in club premises certificates authorising live music.

Source: National Statistics, *Entertainment Licensing 2014*: <https://www.gov.uk/government/publications/entertainment-licensing-2014/entertainment-licensing-statistics-2014>; National Statistics *Entertainment Licensing 2016*: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/571246/Entertainment\\_Licensing\\_Statistics\\_2016\\_-\\_Tables.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571246/Entertainment_Licensing_Statistics_2016_-_Tables.xlsx) [accessed 10 March 2017]

529. Most respondents expressed support or broad acceptance for the deregulatory measures contained in the Live Music Act 2012. The live music industry representatives, business owners and some local councils believed it to be a proportionate and reasonable form of deregulation, which corresponded with the Department for Culture, Media and Sport’s belief that it had been “popular, proportionate and effective”.<sup>498</sup>

530. CAMRA argued that “the changes made through the Live Music Act have not only facilitated greater provision of live music in pubs, but also ensured that a more diverse range of venues can now offer live music, increasing the range of experiences that are available to local communities through the licensed trade”.<sup>499</sup> Poppleston Allen, solicitors who provide legal representation to many licensees, argued that it had been successful, and had allowed many of their clients to put on small scale music events without the need to go through the TENs system.<sup>500</sup>

531. Whilst many local councils believed that the Live Music Act 2012 had been mostly successful, or at least acceptable, in its deregulation of live music, they were nevertheless concerned that the size of events permissible under the Act had increased in 2015 (from audiences of 200 to 500, including staff), and

497 The Department for Culture, Media and Sport, the department responsible for compiling these statistics, additionally noted that, following the Live Music Act 2012, it could “therefore be expected that licences authorising live music performances may decrease, as may applications for new licences. However as the Live Music Act only partially deregulated live music in defined circumstances, the live music category is likely to remain in place on most pre-existing licences. These statistics do not provide an indication of whether the Act has increased the provision of live music itself.” DCMS, *Entertainment Licensing 2016, Statistical Release* (November 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/571412/Entertainment\\_Licensing\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571412/Entertainment_Licensing_2016.pdf) [accessed 10 March 2017]

498 **Q 15** (Kate McGavin, Deputy Director of Media and Creativity, Department for Culture, Media and Sport)

499 Written evidence from CAMRA ([LIC0121](#))

500 Written evidence from Poppleston Allen ([LIC0105](#))

they did not think that any further extensions should be permitted. One local council summed up this attitude when they acknowledged that while they had not “been made aware of any serious problems arising out of the implementation of the Live Music Act”, they believed there should now be “breathing space while the effect of this deregulation is assessed”.<sup>501</sup>

532. A number of local authorities and residents’ associations went further in their criticisms of the Live Music Act 2012. Evidence submitted by the Federation of Bath Residents’ Associations claimed it was a “one size fits all’ deregulation regime which has added to the noise pollution of many town and city centres to the detriment of residents anywhere near where live music is played without the need for a licence.”<sup>502</sup> The Gloucestershire Licensing Officers’ Group were of the similar view that deregulation has now “gone too far as the controls that were in place disappeared under the Live Music Act”.<sup>503</sup>
533. Hounslow Borough Council noted that it was “now possible for reasonably large events to be held without any public consultation which in our experience can be distressing for our residents”.<sup>504</sup> Lambeth Borough Council, referring specifically to live music in beer gardens, noted that they now have to deal with more noise complaints from nearby residents than they once did, “who don’t understand that we can’t simply stop this activity”.<sup>505</sup>
534. It does appear however that many of the concerns of local authorities and local residents stem more from a lack of understanding of the controls which have remained in place following the Live Music Act 2012, or a general inability on the part of councils to use them effectively. Ashford Borough Council spoke for many local authorities when they claimed that “recent deregulation has created confusion amongst applicants as to what is regulated and what is not”.<sup>506</sup>
535. Lambeth Borough Council, while critical of the Live Music Act 2012, also acknowledged that both they and local residents still retain the option to bring a review against premises which cause problems with noise nuisance. However, they claim that “in practice most authorities are under resourced and will only bring a review on the most problematic of premises, and residents seem reluctant to bring their own reviews, no doubt for fear of local reprisal or not wanting to be named.”<sup>507</sup>
536. Poppleston Allen knew of “a handful of cases where conditions have been re-imposed upon licences following noise complaints, meaning that licence holders who previously could rely upon the exempting provisions of the 2012 Act either cannot hold live music at all, or only by complying with very strict conditions”. While they believe this to be “relatively rare”, in their view “this does seem to show that the 2012 Act has teeth”.<sup>508</sup> A list of measures which can be taken in the event of noise complaints is presented in Box 10.

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501 Written evidence from Suffolk Coastal District Council and Waveney District Council ([LIC0029](#))

502 Written evidence from Federation of Bath Residents’ Associations ([LIC0031](#))

503 Written evidence from Gloucestershire Licensing Officer’s Group ([LIC0101](#))

504 Written evidence from London Borough of Hounslow ([LIC0025](#))

505 Written evidence from London Borough of Lambeth ([LIC0134](#))

506 Written evidence from Ashford Borough Council ([LIC0016](#))

507 Written evidence from London Borough of Lambeth ([LIC0134](#))

508 Written evidence from Poppleston Allen ([LIC0105](#))

### Box 10: Mechanisms for protecting local residents in live-music related cases

- Upon a review of the premises licence the Licensing Authority can determine that conditions on the premises licence relating to live or recorded music will apply even between 8am and 11pm;
- If the licence doesn't presently authorise live or recorded music the Licensing Authority can add conditions to the Premises Licence as though the live or recorded music were regulated entertainment authorised by that licence, again to apply even between 8am and 11pm;
- The Licensing Authority can determine that live or recorded music at the premises is a licensable activity and live or recorded music can no longer be provided without permission on the Premises Licence or a Temporary Event Notice;
- Other noise legislation, for example in the Environmental Protection Act 1990, will continue to apply. The Live Music Act does not allow licensed premises to cause a noise nuisance.

537. The way that live music in licensed premises is currently regulated is not without criticism from the other end of the spectrum either. It remains the position of the Musicians' Union and the Music Venue Trust that live music should not be regulated through licensing in any form.<sup>509</sup> They note that other legislation, such as the Environmental Protection Act 1990, Health and Safety at Work etc. Act 1974 and the Fire Safety Order 2005 also exists and is more than sufficient for regulating live music.<sup>510</sup> UK Music highlighted practice in New South Wales, where live music venue licensing was abolished in 2009.<sup>511</sup>
538. This view was not, however, shared by Paul Latham of the UK Live Music Group, who argued that the present state of regulation through the Licensing Act 2003 and the Live Music Act 2012 was reasonable and appropriate. He argued that responsible operators did not wish for a "wild west ... where you just take the shackles off us and let us get on with it. You have to legislate for the worst, as well as the best".<sup>512</sup>
539. He did however suggest, in common with the local authorities mentioned earlier, that overlapping layers of legislation regulating live music could prove confusing to licensees and local authorities alike. He pointed out that, because there are various pieces of legislation relating to live music, guidance should be provided in a simplified form, with "all the best bits of the legislation, to say, 'That is it. Just adhere to those and do not do those. Do not mess about'".<sup>513</sup>
540. Although a number of local authorities and local residents' associations believed that the Live Music Act 2012 had gone too far in deregulating licensable activities, concrete examples of unreasonable levels of nuisance

509 Written evidence from the Music Venue Trust ([LIC0058](#)); [Q 203](#) (Alex Mann, Musicians' Union)

510 The [Environmental Protection Act 1990](#) makes provision for noise abatement notices, the [Control of Pollution Act 1974](#) sets restrictions on the timing of loudspeaker use, the [Health and Safety at Work etc. Act 1974](#) covers noise nuisance and the Regulatory Reform (Fire Safety) Order 2005 ([SI 2005/1541](#)) covers fire safety.

511 Written evidence from UK Music ([LIC0096](#))

512 [Q 203](#) (Paul Latham, UK Live Music Group)

513 [Q 204](#) (Paul Latham, UK Live Music Group)

caused by those activities seemed few and far between. Any licensable activity after 11pm is still regulated under the Licensing Act 2003; there remain remedies for daytime nuisance relating to music, and many concerns appeared to relate to fears of further deregulation, rather than the situation as it presently stands. The Live Music Act 2012 appears largely to have succeeded in its intention to facilitate live music, in particular, as a cultural and commercial activity in licensed premises.

541. **We believe that the Live Music Act 2012 is working broadly as intended, but that there is not presently a case for further deregulation, let alone the complete removal of all live music-related regulation from the Licensing Act 2003.**
542. *We recommend that more be done to spread awareness of the provisions of the Live Music Act 2012 and its implications for licensed premises among local councils, licensed premises and local residents.*

### **‘Agent of Change’ principle**

543. The evidence we heard has highlighted the need to consider how licensed premises which put on live music performances are to be accommodated and protected in the UK’s towns and cities when the need for housing, and residents’ accompanying expectations of quiet living environments, are ever more pressing.
544. One of the most frequent suggestions we heard was to introduce a full ‘agent of change’ principle into UK planning law. This would require anyone instigating a new building development or a change in land use (the ‘agent’ precipitating a change in a given area) to take into account the nearby properties and their functions. If there was reason to believe the functions of the new property or conversion would clash with those of the pre-existing properties, it would fall to the agent of change to take actions to mitigate this clash.<sup>514</sup>
545. In written evidence, Birmingham City Council, alongside a number of other city councils, described serious problems with the way that urban authorities are encouraged to accommodate both the greater use of city centres for both residential uses and the night time economy. They described how:

“Local authorities are encouraged to use space in city centres for residential accommodation, especially apartments. Residents may object to the granting of new licences for bars, clubs and restaurants nearby, because of the impact the premises will have on their quality of life, or the impact that large numbers of customers will have on local parking and the consequential increase in numbers of taxis that will be attracted to the area.”<sup>515</sup>

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514 An amendment proposing the addition of an ‘agent of change’ principle to the Housing and Planning Bill was made in the Commons but was not subsequently included in the Housing and Planning Act 2016. However, in its recent consultation paper, the Government is now asking for views on the inclusion of a full ‘agent of change’ principle within the National Planning Policy Framework. DCLG, *Fixing our Broken Housing Market*, Cm 9352, February 2017, p 103: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590463/Fixing\\_our\\_broken\\_housing\\_market\\_-\\_accessible\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590463/Fixing_our_broken_housing_market_-_accessible_version.pdf) [accessed 10 March 2017]

515 Written evidence from Birmingham City Council Licensing and Environmental Health ([LIC0141](#))

546. Leeds City Council gave us the example of the Duck and Drake, a city centre pub in Leeds well known for live music:

“It is very popular and is one of the few premises with a beer garden in the city centre. This is absolutely vital in the summer as the building is small and hot. The pub has a late licence and has enjoyed popularity for many years. A developer has built flats right next to the pub. The pub received noise complaints from residents living next door who complained about the use of the beer garden into the early hours of the morning. Not only has the pub had to close its beer garden by 9pm, but now has to close all windows and doors to avoid a noise nuisance which makes it unbearably hot in the summer.”<sup>516</sup>

547. They believed that this could have been avoided if there had been a full ‘agent of change’ principle established in planning law. The onus would have been on the developer to take the proximity of the pub into consideration, and might have required that sound proofing and air conditioning be installed. Alternatively the developer could have been made to sound proof and air condition the pub.

548. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 came into effect on 6 April 2016. Developers are now required to seek prior approval from the local planning authority on noise impacts before changing the use of a site from offices to residential dwellings. A number of representatives from the live music and entertainment industries approved of this move, with Equity describing it as an “important step towards rebalancing the need to provide new housing while also protecting existing live entertainment venues”.<sup>517</sup>

549. However, while all witnesses who discussed this change welcomed it, most believed it still did not go far enough. Alex Mann of the Musicians’ Union told us that they were still “partial measures” which only affected conversions, where existing buildings are converted into domestic residences. He noted that the measures “do not, however, cover new housing developments which are not conversions. The venues that exist in the spaces already are at a bit of a disadvantage. If you build a block of flats next to a venue that already exists, the first thing a tenant might consider doing is complaining about noise.”<sup>518</sup>

550. The UK Live Music Group, the Musicians’ Union and the Music Venue Trust also argued that even this limited provision was sometimes not being taken seriously by developers, and was not being enforced. They requested that the current provisions be extended beyond permitted development rights to cover new build developments, and that they be explicitly referred to as an ‘agent of change’ principle, as this clearly and succinctly described the intention behind the principle.<sup>519</sup>

551. However, Mark Davyd of the Music Venue Trust warned against an “overly simplistic” approach to introducing a full agent of change principle, as this might equally act as a blanket prohibition on new music venues. In his view,

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516 Written evidence from Leeds City Council ([LIC0034](#))

517 Written evidence from Equity ([LIC0071](#))

518 [Q 199](#) (Alex Mann Musicians’ Union)

519 [Q 199](#) (Paul Latham, UK Live Music Group, Alex Mann, Musicians’ Union and Mark Davyd, Music Venue Trust)



“if somebody wanted to build a music venue, people would be able to say, ‘Well, there was no music venue here before’”.<sup>520</sup> Instead, he highlighted the Australian model, where there is a “region-wide overlay, with local interpretation”. If this was replicated in the UK, councils could create “music zones within towns and cities and designate specific streets on which agent of change would be applied.”

552. Mark Davyd also noted that the language used to describe licensing and planning regulations which related to music venues could often be unhelpfully vague and opaque—he suggested replacing terms such as “cultural spaces”, which can be “very subjective and open to interpretation”, with specific descriptions of the types of venues in question.<sup>521</sup>

553. ***We recommend that a full ‘Agent of Change’ principle be adopted in both planning and licensing guidance<sup>522</sup> to help protect both licensed premises and local residents from consequences arising from any new built development in their nearby vicinity.***

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520 [Q 199](#) (Mark Davyd, Music Venue Trust)

521 *Ibid.*

522 The National Planning Policy framework and the section 182 Guidance respectively.

## CHAPTER 12: FEES AND FEE MULTIPLIERS

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### Licensing fees

554. When applications are made for the grant, renewal or variation of a premises licence or club premises certificate, the applicant must pay a fee to the licensing authority. The intention is that the fee should cover the cost of administering the licensing function. The Home Office told us that “licensing fees are levied on the basis of cost recovery, as set out in HM Treasury’s Managing Public Money”.<sup>523</sup>
555. The fees local councils may charge are set nationally by the Licensing Act 2003 (Fees) Regulations 2005 (the Fees Regulations).<sup>524</sup> They have not seen any increase since 2005, and most respondents who broached this subject believed some increase was now due. However, there were significant differences of opinion as to whether the power to set fees should remain with central government or whether, as with the Gambling Act 2005, the Scrap Metal Act 2013, and taxi and private hire vehicle regulations, the power should be devolved to local councils.<sup>525</sup>
556. Section 121 of the Police Reform and Social Responsibility Act 2011, which has not yet been brought into force, will make amendments to the Licensing Act 2003, adding two new sections 197A and 197B which will allow the Secretary of State, in making Fees Regulations, to devolve the power to set licence fees to licensing authorities. The Fees Regulations would then also be able to “specify constraints on the licensing authority’s power to determine the amount of the fee”<sup>526</sup> by, for example, setting minimum and maximum amounts that may be charged. The Home Office said that they were open to the idea of locally-set fees, but that the previous Government had consulted local authorities on the matter, and given the “quite low” level of response, “the Government were unable to make a decision about whether to commence the legislation or not”.<sup>527</sup> This, no doubt, is one reason why they have not brought into force section 121 of the 2011 Act.
557. Most businesses and the organisations that represent them are strongly against devolving the setting of licence fees to local authorities. Some, such as the youth hostel chain Beds & Bars, told us that “nationally set fees allows for a better understanding of the likely costs to a business such as ours, of changes within our estate in the short to medium-term”. They feared that allowing locally-set fees “would add to our administrative costs and would create uncertainty”.<sup>528</sup> This was re-iterated by the Association of Licensed Multiple Retailers (ALMR), who suggested that “you do not have to be a very big business before you are trading across two local authority districts and you have inconsistencies and different fee levels which impose burdens just to keep on top of it”.<sup>529</sup>

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523 Written evidence from Home Office ([LIC0155](#))

524 Licensing Act 2003 (Fees) Regulations 2005 ([SI 2005/79](#)). The Licensing Act 2003 (Fees) (Amendment) Regulations 2005 ([SI 2005/357](#)). Subsequent amending Regulations have made only minor changes, and have not increased the fees.

525 For examples of the former position, see written evidence from Beds & Bars ([LIC0114](#)), Sainsbury’s ([LIC0046](#)) and CAMRA ([LIC0121](#)). For examples of the latter position, see written evidence from Ashford Borough Council ([LIC0016](#)), Healthier Futures ([LIC0097](#)) and the LGA ([LIC0099](#)).

526 Licensing Act 2003, [section 197A\(4\)](#)

527 [Q 11](#) (Andy Johnson, Head of Alcohol, Home Office)

528 Written evidence from Beds & Bars ([LIC0114](#))

529 [Q 90](#) (Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers)

558. Beds & Bars, along with several other businesses who wanted fee-setting power to remain with central government, also conceded that they were “concerned that fees would then significantly escalate, unnecessarily so in our view”.<sup>530</sup> Pinsent Masons LLP, who represent many licensees, shared this view, noting that “the main issue that operators are concerned about would be the rise in the level of fees, should individual areas have greater powers to set this then it may lead to higher prices in certain areas”.<sup>531</sup>
559. There was also some opposition to the idea from a small number of local councils, who were concerned that requiring locally-set fees might add to the administrative burdens of smaller councils. Sedgemoor District Council, for example, stated that “as a smaller authority, however, the process of setting fees from scratch is a complicated process and one that takes up valuable resources”.<sup>532</sup> They also pointed to the risk that “should the level of fees be challenged successfully, reparation costs are potentially payable over a lengthy period of time”. Waverley Borough Council made similar points, noting that the precedent of locally-set taxi licensing fees showed that it could lead to “wasted man hours and costs in setting, advertising, supporting and defending them”.<sup>533</sup> Brighton and Hove Council argued that national fees avoid “potential political and financial risks” for cities like theirs, which are economically dependent on the leisure industry.<sup>534</sup>
560. Most local councils were however of the opinion that licensing fees are currently far below the level of cost-recovery, and that local authorities are being expected to subsidise the licensing system through money raised from general taxation. They argued that only if fees were set locally would councils be able to adjust fees to a level appropriate to their own particular enforcement requirements. Councillor Richards of Stratford-upon-Avon argued that:
- “As things stand, the fees associated with licences limit the amount of enforcement that we can conduct. If we could lift those fees or raise them, we might be able to reduce the issues that we experience ... one of the benefits of the Licensing Act is its flexibility and the fact that councils can make decisions based on their own local context. Similarly, being able to do that for fees would be very beneficial.”<sup>535</sup>
561. Others such as Ashford Borough Council noted that various other licensing fees, including those for gambling premises, taxis and street trading, are already set locally, and believed that it was unfair and anomalous that alcohol licensing fees should still be set nationally.<sup>536</sup> However, they also agreed with Greenwich Borough Council, who said that guidance and regulations “must be clear about the legitimate inclusion of licensing compliance costs within the cost-recovery process as failure to do so could undermine the entire licensing system”.<sup>537</sup>

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530 Written evidence from Beds & Bars ([LIC0114](#))

531 Written evidence from Pinsent Masons LLP ([LIC0074](#))

532 Written evidence from Sedgemoor District Council Licensing and General Purposes Committee ([LIC0076](#))

533 Written evidence from Waverley Borough Council ([LIC0117](#))

534 Written evidence from Brighton and Hove Council ([LIC0017](#))

535 [Q 21](#) (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-upon-Avon District Council)

536 Written evidence from Ashford Borough Council ([LIC0016](#)); Healthier Futures ([LIC0097](#))

537 Written evidence from Royal Borough of Greenwich ([LIC0176](#))

562. The LGA and a number of councils also highlighted the considerable regional variability in the costs of enforcing the Licensing Act 2003. A recent survey on licensing fees conducted by the LGA showed that while the annual net deficit across all licensing authorities in England and Wales was around £10.3 million, this was spread very unevenly across the country. 52% of the 102 licensing authorities that responded reported operating in deficit, and these were most likely to be London boroughs, metropolitan districts and district councils, whereas English and Welsh unitary authorities were most likely to operate in surplus. The licensing authority with the largest surplus was an English unitary authority (£0.265 million), while a London borough recorded the largest deficit (-£1.4 million).<sup>538</sup>
563. Some councils argued that locally-set fees would allow them much greater flexibility to account for local circumstances. Westminster City Council, for example, were against linking fees to rateable values, as Westminster had various unusual circumstances which could lead to outcomes they felt were unfair to particular kinds of businesses. They described how a “nightclub licensed until 3am with a capacity of 1,050 currently pays £350 while a local pub in Pimlico that closes at 00:00 with a capacity of less than 50 people is charged £1,050”.<sup>539</sup> They also have “parks and open spaces which have no rateable value but do have Premises Licences”. They concluded that “local conditions could be better managed and such irregularities ironed out fairly, if decisions on licence fee levels were made at a local rather than national level”.<sup>540</sup>
564. In 2016, a further survey was conducted by the Home Office to ascertain current interest by local authorities in locally-set licensing fees. We were told:
- “The survey is now closed and we have had some initial discussions with the [Local Government] association about some of the headline figures. It is currently in the process of going through the information to do some more detailed analysis. No decision has been made on what to do about licensing fees pending the discussions that we are about to have with it.”<sup>541</sup>
565. We have heard evidence both for and against locally-set fees. The fees are supposed to cover the cost of administering the Licensing Act 2003, and this varies from place to place, and between local authorities. It is, we believe, logical that fees be set locally to reflect this. ***We recommend that section 121 of the Police Reform and Social Responsibility Act 2011 be brought into force, and new Fees Regulations made requiring licensing authorities to set licensing fees.***

### Fee multipliers

566. The Schedules to the Fees Regulations include tables dividing properties into “bands”—the term “band” in this context relates exclusively to the Fee Regulations table and is not equivalent to council tax bands or any other banding system. The fee bands are calculated on the basis of the “rateable value” of the property the subject of the application. “Rateable value” is a reference to business rates, as calculated by the Valuation Office Agency

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538 CIPFA, *Licensing Act (2003) Fees Survey* (July 2016) p 4

539 Written evidence from Westminster City Council ([LIC0090](#))

540 Written evidence from Westminster City Council ([LIC0090](#))

541 [Q 11](#) (Andy Johnson, Head of Alcohol, Home Office)

(VOA). The lowest rateable values fall into band A (£4300 and below), and the highest into Band E (£125,001 and above).

567. The fees which, as we have said, are unchanged since 2005, are set out in these Tables:

**Table 2: Application Fees**

Rateable Value	Premises Value	Fee
A	No rateable value up to £4,300	£100
B	£4,301 to £33,000	£190
C	£33,001 to £87,000	£315
D	£87,001 to £125,000	£450
E	£125,001 and above	£635
D primarily alcohol	2 x multiplier	£900
E primarily alcohol	3 x multiplier	£1,905

**Table 3: Annual Charges**

Rateable Value	Premises Value	Fee
A	No rateable value up to £4,300	£70
B	£4,301 to £33,000	£180
C	£33,001 to £87,000	£295
D	£87,001 to £125,000	£320
E	£125,001 and above	£350
D primarily alcohol	2 x multiplier	£640
E primarily alcohol	3 x multiplier	£1,050

Thus the largest and/or most valuable properties on the market pay the highest business rates and, accordingly, the highest licensing fees; the intention was to ensure that fees were fair and proportionate in respect of licence and certificate holders operating in different ways and on different scales.

568. The Fees Regulations make a special provision regarding premises licences (but not clubs) where the premises will be used exclusively or primarily for the supply of alcohol for consumption on the premises (the “on-trade”). Some of these licences are liable for an extra fee—also called a “multiplier”—to reflect the fact that the consumption of alcohol will take place on the premises. The multiplier effectively doubles or triples the fee being paid, depending upon fee band.

569. In 2005, when the concept of multipliers was first introduced, their purpose and the logic behind exempting particular kinds of premises was debated in this House. Lord McIntosh of Haringey, the then Parliamentary Under-Secretary of State, Department for Culture, Media and Sport, stated:

“It has been argued that it was an error to apply the multiplier only to pubs and not to nightclubs because customers coming out of nightclubs



cause just as much trouble on the streets ... But that misunderstands the function of licence fees. The policing of the behaviour of customers after they leave premises is a matter for general taxation, which is a quite separate debate.

Fees can legitimately cover only the costs of carrying out licensing functions and enforcing licensing offences on the premises themselves, not outside ... My answer to the noble Lord, Lord Clement-Jones, is categorical: no, we do not propose to make nightclubs pay the multiplier that applies to pubs”.<sup>542</sup>

570. While this debate focused on the exemption of nightclubs from fee multipliers, it did highlight the supposed logic behind both multipliers and their exemptions; namely, that they related to a highly constrained definition of ‘enforcement’ as relating only to on-premises enforcement of licensing offences. Following this logic, the cost of resulting impacts, such as additional policing costs resulting from alcohol-related crimes, were not to be factored in to licensing fees. Additionally, as Lord McIntosh of Haringey noted at the time, fees should have “nothing to do with what any individual, business or club can afford to pay”, nor “what anyone should pay, based on moral ground”.
571. However, we have heard evidence arguing that it is unfair that pubs with high rateable values are required to pay a multiplier of licensing fees, doubling or tripling the fees they must pay, while supermarkets with the same rateable values, selling very high volumes of alcohol, are not. CAMRA claimed that it is “inequitable that pubs with high rateable values are required to pay a multiplier of standard licensing fees whilst supermarkets with the same rateable values are not”, and argued that the exemption for larger supermarkets which fall in Bands D and E should end.<sup>543</sup> This would increase the fees for supermarkets in line with Tables 2 and 3.
572. We have every sympathy with the view that it is unfair that pubs with high rateable values should be required to pay a substantial multiplier, while supermarkets should not, on the ground that “policing of the behaviour of customers after they leave premises is a matter for general taxation”. We considered recommending that the multiplier should be extended to apply to supermarkets and other off-licences of an appropriate rateable value. There is however a further consideration.

### **The EU Services Directive**

573. On 12 December 2006 the European Parliament and the Council adopted Directive 2006/123/EC on services in the internal market.<sup>544</sup> Article 13(2) of the Directive reads:

“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.”

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542 HL Deb, 24 February 2005, [cols 1380–1392](#)

543 Written evidence from CAMRA ([LIC0121](#))

544 Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services on the internal market ([OJ L 376/36](#), 27 December 2006)

This provision is not directly applicable, but is implemented in the UK by Regulation 18 of the Provision of Services Regulations 2009<sup>545</sup> which came into force on 28 December 2009, and which is in almost identical terms.

574. There has not been, and is not, any doubt that the fee paid by an applicant can and should cover the cost to the authority of processing the application—described in the Directive as “authorisation procedures and formalities”—whether or not the application is successful. Nor has there, until recently, been any doubt that the fee could also cover the cost to the authority of running and enforcing the licensing scheme. The lawfulness of this second element of the fee has however now been put in doubt in the case of *Hemming*<sup>546</sup>.
575. The claimant in that case challenged the fee set by Westminster City Council on a number of grounds.<sup>547</sup> The Supreme Court did not itself throw doubt on the lawfulness of the enforcement fee, holding (after very little argument) that a scheme which involved requiring a successful applicant to pay “a further fee to cover the costs of the running and enforcement of the licensing scheme ... would be consistent with regulation 18 of the Regulations and article 13(2) of the Directive.” What the Supreme Court was doubtful about was whether a scheme involving the payment of an enforcement fee by a claimant whose application had yet to be processed was consistent with the Directive, even though this element of the fee would be refunded if the application was unsuccessful. The Court accordingly referred this question, and only this question, to the Court of Justice of the European Union (CJEU), which decided on 16 November 2016 that such a scheme would be unlawful.<sup>548</sup>
576. The CJEU was not asked, and did not answer, the question whether an enforcement fee would be lawful in any circumstances. However their judgment was preceded on 28 July 2016 by the Opinion of the Advocate-General<sup>549</sup> who, although this question had not been put to him, stated his view that Article 13(2) of the Services Directive precluded a local authority, when calculating the fee due for the grant or renewal of an authorisation, from taking into account the cost of managing and enforcing the authorisation scheme.<sup>550</sup> His Opinion does not form part of the ruling of the CJEU which will be considered by the Supreme Court. But it is possible that in future litigation reliance will be placed on the Advocate-General’s Opinion, and if a UK court follows it, such an element of a fee will become unlawful. There

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545 Provision of Services Regulations 2009 (*SI 2009/2999*)

546 *R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council* [2015] UKSC 25 : <https://www.supremecourt.uk/cases/docs/uksc-2013-0146-judgment.pdf> [accessed 10 March 2017]

547 The claimant is the licensee of a sex shop. The fee is therefore set under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, but it is clear that what is decided in that case would apply equally to fees set under the Licensing Act.

548 Judgment of the Court of Justice of the EU in Case C-316/15: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5e5225732a6984943a1a4dc077ccbcea8.e34KaxiLc3qMb40Rch0SaxyKc3f0?text=&docid=185424&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=383714> [accessed 10 March 2017]

549 Opinion of Advocate-General Wathelet in Case C-316/15: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5e5225732a6984943a1a4dc077ccbcea8.e34KaxiLc3qMb40Rch0SaxyKc3f0?text=&docid=182282&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=383714> [accessed 10 March 2017]

550 In paragraph 78 of his Opinion the Advocate-General stated that the Court of Appeal, in paragraphs 80–84 and 88 of its judgment which was appealed to the Supreme Court, “held—correctly in my view—that Member States could not impose charges that went beyond the costs of the authorisation and registration procedure”. See the judgment of the Court of Appeal: [http://licensingresource.co.uk/sites/default/files/Hemming-APPROVED-Judgement\\_0.pdf](http://licensingresource.co.uk/sites/default/files/Hemming-APPROVED-Judgement_0.pdf) [accessed 10 March 2017]

must therefore be considerable doubt about the legality of this element of the fee.

577. The former Department for Business, Innovation and Skills (BIS), which was the responsible department during the negotiation of the Services Directive, seems from the outset to have had no doubt that this element of the fee would be unlawful. In *The European Services Directive: Guidance for Local Authorities*<sup>551</sup> it wrote: “Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities. Enforcement Costs should not be assimilated with the application fee.” The Department’s corresponding *Guidance for Business on the Provision of Services Regulations*<sup>552</sup> states: “Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process, e.g. to cover the actual cost of the application process. Fees should not be used as an economic deterrent to certain activities or to raise funds. As now, if you believe the fee to be disproportionate, you can contest it with the authority concerned.”
578. Westminster City Council, the appellants in the *Hemming* case, stated in their written evidence to us that the Government’s failure to bring into force the provisions of the Police Reform and Social Responsibility Act 2011, allowing locally set fees to recover the full costs of local authorities, related to the *Hemming* case, but “any such reservations should have now been laid to rest by the decision of the Supreme Court made in April 2015.”<sup>553</sup> Their evidence was plainly written without their being aware of the Opinion which Advocate-General Wathelet had just given.
579. Westminster City Council also told us that they had long argued that “it is not possible to recover the cost of the resources that we channel into administering and managing the licensing regime.” They add:
- “The LGA have previously estimated that the current system results in local authorities and local taxpayers subsidising the licensed trade by up to £1.5m per month as a result of the current, nationally-set system. CIPFA recently undertook a survey of participating local authorities which further suggests that the national system does not allow for cost recovery with the country-wise deficit estimated at between £9.2m and £11.4m p.a. In Westminster, we understand that our own local deficit is approximately £1.387m per annum, based purely on the costs of administering the system without any wider consideration of costs incurred.”
580. We are all too well aware that a strict application of the Services Directive to licensing fees may result in all the other associated costs of licensing

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551 Department for Business, Innovation and Skills, *The European Services Directive: Guidance for Local Authorities*, 2nd edition (June 2009), part 12d: <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file50026.pdf> [accessed 27 March 2017]

552 Department for Business, Innovation and Skills, *Guidance for Business on the Provision of Services Regulations* (October 2009), paragraph 86: <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file53100.pdf> [accessed 27 March 2017]

553 Written evidence from Westminster City Council ([LIC0090](#))

authorities having to be met out of other funds.<sup>554</sup> These are certainly matters which the LGA will wish to discuss with the Home Office and other Government departments.

581. *The Opinion of the Advocate-General in the case of Hemming has cast doubt on the legality of any element of a licensing fee which goes beyond the cost to a licensing authority of processing an application. Accordingly we consider that it would not be sensible to recommend the extension of the fee multiplier to supermarkets at this time.*
582. *We recommend that the Home Office should consider whether the Fees Regulations should be amended to make them compatible with the EU Services Directive and the Provision of Services Regulations 2009.*
583. *If, as we recommend, the power to set licence fees is devolved to licensing authorities, then this power will inevitably have to be constrained by any conclusion which the Home Office draws on the compatibility of fees generally with the Directive and Regulations.*

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554 This does not apply only to authorities licensing sex shops (as in *Hemming* itself) or the sale of alcohol; before the Supreme Court there were 8 interveners, including the Local Government Association, the Bar Council, the Law Society, the Architects Registration Board, and other bodies relying on fees for enforcing their regulatory schemes.

## CHAPTER 13: OTHER MATTERS OF IMPORTANCE

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### Application systems

584. We have heard from many councils, businesses and the solicitors who support them that there is a pressing need for more modern and efficient licence application systems in many parts of the country. Many respondents noted that some councils only allow paper applications, some only accept electronic applications, and some accept electronic applications but cannot or will not accept electronic payments.
585. The Association of Licensed Multiple Retailers said they would like to see local authorities:
- “... adopt a common platform to accept electronic applications. Some use their own system and portals, others use GOV.UK’s, some use their own forms and others use the standard forms. We note that some still will not accept electronic applications, and a number of them, whilst accepting electronic applications, will not accept (or cannot accept) electronic payment by credit or debit card.”<sup>555</sup>
586. Kurnia Licensing Consultants also thought that the GOV.UK platform was the best approach for submitting and receiving applications, and believed that while “most authorities administer electronic applications quickly and efficiently ... some do not”. The lack of clear guidance on electronic applications also meant that “some licensing authorities are still insisting that original documents are sent in the post and that until such time the original documents have been received they will not start to process an application”.<sup>556</sup>
587. The LGA also pointed out that when a form is completed using the GOV.UK platform, it will be sent to the relevant council, but if the GOV.UK system is not interoperable with the council’s computer system, “the council must re-enter every bit of data that is sent to it”, which is a “needless duplication and inefficiency given today’s technologies”.<sup>557</sup> They further informed us that they had:
- “... engaged with the Government Digital Service (GDS) to develop [IT integration proposals] further, with the support of Regulatory Delivery in BEIS [the Department for Business, Energy and Industrial Strategy], but GDS has not yet committed resources to take this forward. Doing so would dramatically improve the experience for business and community groups, free up council officers to do other tasks, and save money. The government should commit to investing in this area”.<sup>558</sup>
588. On a more minor, but still potentially significant point, Wolverhampton City Council noted that “the online application forms provided on GOV.UK were still not compliant with the forms prescribed by regulations made under the Licensing Act 2003”.<sup>559</sup>
589. Most businesses want a unified online portal or system, like the GOV.UK platform. We believe that the introduction of a consistent, national online

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555 Written evidence from Association of Licensed Multiple Retailers ([LIC0150](#))

556 Written evidence from Kurnia Licensing Consultants Limited ([LIC0162](#))

557 Written evidence from LGA ([LIC0099](#))

558 Written evidence from Local Government Association ([LIC0099](#))

559 Written evidence from City of Wolverhampton Council ([LIC0095](#))



system for licensing applications could introduce considerable efficiencies for both local councils and businesses, and would also improve the quality and consistency of data on licensed premises across the country. It would also create opportunities for greater transparency, as applications collected in this way could more easily be presented to the public through local council websites, and data could automatically be generated, allowing residents to see more clearly licensing developments in their local areas.

590. *We recommend further development of the GOV.UK platform for licensing applications, to ensure that it is working with local authority computer systems, and fully compatible with the provisions of the Licensing Act 2003. In due course, its uniform adoption by all local authorities in England and Wales should be encouraged by the Government and the section 182 Guidance updated accordingly.*

### National Database of Personal Licence Holders

591. As we previously mentioned,<sup>560</sup> under the Licensing Act 2003 it is no longer a requirement that an applicant demonstrate that they are a “fit and proper person” to hold a personal licence. However, section 129 of the Act gives courts the power to order the suspension or forfeiture of a personal licence on conviction of a relevant offence. This power is rarely used, largely because licence-holders, when charged with a relevant offence, seldom comply with their duty under section 128 of the Act to inform the court that they hold a personal licence.<sup>561</sup> Unless the licence-holder informs the licensing authority of his conviction, as required by section 132, that authority will, in turn, be unable to exercise its existing powers, or its new powers under section 132A (inserted by section 138 of the Policing and Crime Act 2017)<sup>562</sup> to suspend or revoke the licence without a request from the courts.
592. We received considerable evidence that, as a consequence, some personal licence holders are retaining their personal licences after they should have been revoked, and in some cases are successfully obtaining new premises licences in other parts of the country, where local authority databases are not able to keep track of them. Cornwall Council Licensing Authority represented the views of many local authorities when they explained that “we are not able to adequately check on the status of personal licence holders and if a personal licence was revoked by a Magistrates Court in a different local authority, we would not be aware and could still be named as a DPS on a premises licence in our area.”<sup>563</sup> The LGA further noted that “while neighbouring councils may share information about prosecution, this is not practical across all 350 licensing authorities and needs central coordination.”<sup>564</sup>
593. Most respondents who highlighted this issue wanted the establishment of a national database of personal licence holders, which would allow them to check whether an individual had previously had a licence revoked.<sup>565</sup> Central England Trading Standards suggested this should be linked to the Police

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560 Paragraph 247

561 Written evidence from John Saunders ([LIC0067](#))

562 Section 138 is brought into force on 6 April 2017 by the Policing and Crime Act 2017 (Commencement No. 1 and Transitional Provisions) Regulations 2017 ([SI 2017/399](#))

563 Written evidence from Cornwall Council Licensing Authority ([LIC0069](#))

564 Written evidence from LGA ([LIC0099](#))

565 Written evidence from Berkshire Licensing Liaison Group ([LIC0122](#)), Breckland Council ([LIC0120](#)), Hinckley & Bosworth Borough Council ([LIC0049](#)), Sefton Metropolitan Borough Council ([LIC0084](#)) and others.

National Database, which would also allow users to check for relevant criminal convictions which may disbar an individual from holding a personal licence.<sup>566</sup>

594. *We believe the enforcement of section 128 and 132A of the Licensing Act 2003 would be facilitated by a national database of personal licence holders, against which to check those who are convicted of relevant offences. We recommend the creation of a national database of personal licence holders for use by courts and licensing authorities, linked to the Police National Database.*

### **Suspension of licences for non-payment of business rates**

595. A number of witnesses, including various local councils, the Institute of Licensing and the Local Government Association, have reported that some licensed premises are drawing substantially on local authority services, yet are not paying business rates. They argue that local authorities should be given the power to suspend or revoke premises licences in these situations, as is now the case with non-payment of annual licence fees.
596. Cardiff City Council, who were in favour of this idea, observed that currently, “there is no connection with the issue of a licence and payment of business rates. Licensing and business rates are governed by two separate pieces of legislation, and providing the licensee complies with the licensing regulations, the Council is unable to do anything, other than grant a license, regardless of any outstanding business rates”.<sup>567</sup>
597. The Institute of Licensing told us that before licensing officers were permitted to suspend premises licences for non-payment of annual fees, they “often found it was the same individuals that were not paying their business rates that were not paying their annual fees”. They believed it would “assist local authorities if premises licences could be suspended for non-payment of business rates in addition to the annual licence fee, and if there was also an option for revocation of the licence in persistent cases”.<sup>568</sup> The LGA agreed with this argument, noting that unpaid business taxes sometimes amounted to “many thousands of pounds”, and that “no other supplier would indefinitely permit a debtor to continue using their services in this way”.<sup>569</sup> They were keen to emphasise, however, that councils “would not seek to exercise revocation until all other options had been exhausted, as it would render future payment even less likely”, but they nevertheless believed the option should be available as a last resort.
598. However, using the Licensing Act 2003 to enforce the collection of other municipal taxes, an area not strictly related to licensing, might encourage its use for many other functions even less connected with licensing, which should be discouraged. As we concluded in Chapter 6, in relation to the laws governing disabled access, the Licensing Act 2003 should not become a mechanism for general enforcement of the law.
599. *We do not recommend that licensing committees be given the power to suspend or revoke a premises licence for non-payment of business rates.*

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566 Written evidence from Central England Trading Standards ([LIC0021](#))

567 Written evidence from Cardiff County Council ([LIC0082](#))

568 Written evidence from Institute of Licensing ([LIC0126](#))

569 Written evidence from Local Government Association ([LIC0099](#))

## Clubs

600. As outlined in Chapter 2, alongside conventional premises licences, the Licensing Act 2003 also created club premises certificates which permit qualifying clubs to serve alcohol to their members and members' guests without a full premises licence.
601. The Act describes qualifying clubs as “organisations where members have joined together for particular social, sporting or political purposes. They may then combine to buy alcohol in bulk as members of the organisation to supply in the club”. Such clubs technically only sell alcohol by retail to guests. As members are considered to own part of the alcohol stock, when a member purchases alcohol, there is no sale, and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another.
602. Under normal circumstances these clubs are only permitted to serve members and their guests, although they may also issue Temporary Event Notices (see Chapter 8). They must also meet five other qualifying conditions (specified in section 62 of the Act—see Box 11). In return for adhering to these restrictions, clubs are entitled to certain benefits, including an exemption for all members from requirements to hold a personal licence, and more limited rights of entry for the police and other authorities. They are also exempt from police powers of instant closure on the grounds of disorder and noise nuisance.

### Box 11: The Five Qualifying Conditions for Clubs

Under section 62 of the Act qualifying clubs must meet five qualifying conditions. These are that:

- (1) Under the rules of the club persons may not—
  - (a) be admitted to membership, or
  - (b) be admitted, as candidates for membership, to any of the privileges of membership,without an interval of at least two days between their nomination or application for membership and their admission.
- (2) Under the rules of the club persons becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission.
- (3) The club is established and conducted in good faith as a club.
- (4) The club has at least 25 members.
- (5) Alcohol is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club.

603. During our inquiry we took evidence from representatives of several different kinds of members' clubs and their representatives, including the Working Men's Club and Institute Union (WMCIU), and the Association of London Clubs. The overall picture we received was that while the Licensing Act 2003 was serving members' clubs well, many clubs across the country were struggling, with 3,500 clubs having closed in the previous five years alone.

The only exception to this trend was in London, where private members' clubs at the higher end of the market had seen a resurgence in recent years.<sup>570</sup>

604. Representatives of the WMCIU and the Association of London Clubs shared some concerns with conventional premises licensees relating to the diminishing flexibility within the system, high costs and inconsistent enforcement practices on the part of local authorities, but they believed the Act served clubs well.<sup>571</sup> Peter Adkins, who provides legal support to many members' clubs across the country, believed it was "certainly an improvement on the old system", and while there remained some "strange licensing officers and police who interpret the law in different ways, generally across the country we have a fairly pragmatic and consistent approach to the law".<sup>572</sup>
605. Most of the evidence we took on members' clubs noted the considerable decline in the number of clubs across the country, and a corresponding decline in club membership. However, none believe this to be a result of the legislation, and Councillor Mason, of Rushcliffe, represented the views of most when he told us that "it is the way of life that is passing by rather than the Act. People do not go to members' clubs; they want more freedom to meet their friends in different premises".<sup>573</sup> George Dawson, President of the WMCIU, similarly emphasised a decline in the culture of club membership and attendance. However, he also emphasised that members' clubs:
- "... are still a significant part of the on-trade. There is £21 billion in the on-trade in beer. CIU probably accounts for 5% of that by itself, but the ACC has 900 clubs. There are also British Legion clubs. We are still a significant player in the on-trade. The on-trade has shrunk tremendously, but it is not all depression and everybody closing down."<sup>574</sup>
606. One aspect of the Licensing Act 2003 which could be unhelpful to clubs is the requirement that all clubs stipulate at least a two-day waiting period between the nomination or application of a new member, and that individual becoming a full member.<sup>575</sup> This was also a requirement for private casinos until the Gambling Act 2005 removed it, allowing individuals to become members at the time of application.
607. When we asked witnesses about this, we received a mixed response. Paul Varney, of the Association of London Clubs, believed it "should remain very much in force", as it "differentiates us from casinos and profit-making clubs", and "gives other members a chance to see who is being elected".<sup>576</sup> Peter Adkins suggested that most clubs generally required a minimum of 14 days, to allow for approval by the club's governing committee.<sup>577</sup>
608. Mr Dawson, while agreeing with Mr Varney that most club rulebooks stipulate much longer waiting periods than two days, questioned "from the point of view of equality or standardisation, if casinos have the two-day requirement

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570 [Q 169](#) (Paul Varney, Association of London Clubs)

571 [Q 166](#) (George Dawson, Union President, Working Men's Club and Institute Union); [Q 166](#) (Paul Varney, Association of London Clubs)

572 [Q 166](#) (Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors)

573 [Q 25](#) (Councillor Debbie Mason, Rushcliffe Borough Council)

574 [Q 172](#) (George Dawson, Union President, Working Men's Club and Institute Union)

575 See Box 11, paragraph 602

576 [Q 171](#) (Paul Varney, Association of London Clubs)

577 [Q 171](#) (Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors)

removed, why can we not have it removed?”<sup>578</sup> He also pointed out that many clubs have some provision for temporary membership or affiliation, often to allow members of affiliate clubs to use facilities on holiday, so this would not be a radical change to what is currently allowed.

609. **The evidence we received on the application of the Act specifically to clubs suggests that they have adapted to it well.**
610. *Given the decline in most forms of members’ clubs, and the social value they hold in many communities, we believe that even minor adjustments which may help them should be made. We therefore recommend the removal of Conditions 1 and 2 by the repeal of section 62 (2) and (3) of the Licensing Act 2003, abolishing the two-day waiting period required of new members. We acknowledge that at least some clubs will want to keep this waiting period in their club rules, and they will still be entitled to do so.*

### Sales of alcohol airside and portside

611. No one travelling on an international flight can fail to notice that, once they have gone through customs, control of the sale of alcohol seems to be relaxed, and the permitted hours even more so. This is because the Licensing Act 2003 is expressly disapplied from such areas.
612. The incidents occurring on flights are notorious, sometimes requiring flights to be diverted, and more often than not such incidents are the consequence of alcohol consumed airside before the flight. Jet2.com wrote to tell us that they “have dealt with 536 such disruptive incidents this summer [2016] alone, over half are reported to have been fuelled by alcohol. Many also had the opportunity to drink heavily at the airport before they get on the flight. The Civil Aviation Authority report a 36% increase in disruptive passenger incidents in the UK between 2014 and 2015”.<sup>579</sup> This is a large number of incidents for a relatively small airline. Alcohol Concern told us of a survey of holidaymakers which found that nearly 1 in 5 passengers said they began their holiday drinking at the airport.<sup>580</sup>
613. Sarah Newton MP did not deny the importance of the issue: “We have all seen pretty horrific images of what happens on some flights—even some flights having to be diverted and landed. There is harm to other passengers and to staff at the airport and on the aircraft. It is a really important point”.<sup>581</sup> But she explained that, although the Licensing Act may not apply, there is an Aviation Industry Code of Practice on Disruptive Passengers which, she told us, was not just adequate, but “a better way of dealing with the problems that you have identified. We think the comprehensive code is a more effective way of dealing with them. We absolutely recognise the problem that you describe, but we think this is the best way of dealing with it.”
614. The first question therefore is whether the Code is indeed effective and, as the Minister added, “very much supported and backed up by police.” This was certainly not the view of the Sussex Police:

578 [Q 171](#) (George Dawson, Union President, Working Men’s Club and Institute Union)

579 Written evidence from Jet2.com ([LIC0156](#))

580 Written evidence from Alcohol Concern ([LIC0085](#))

581 [Q 222](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)



“Gatwick Airport sits within the Sussex Police boundary and there have been a number of alcohol test purchases conducted airside at the Airport. Whilst improvements have now been made, during the first round of testing, all but one of the premises selling alcohol sold alcohol to our under 18 year old test purchasers. No sanctions were possible due to none of the Licensing Act 2003 offences being relevant for airside premises, and because of this engagement with the owners of the licensed premises, including very large well known providers, was very difficult.”<sup>582</sup>

We are not surprised that the Sussex Police detected so many underage sales; the Code says nothing about them and, since the Act does not apply, the sale of alcohol to children under 18 is not an offence.

615. With her supplementary evidence the Minister sent us a copy of the Code which, she told us, was launched in summer 2016 and operates in 22 airports.<sup>583</sup> She explained that the ALMR, among others, had worked to create the Code, the implication being that they were satisfied with it. This is not what they told us in their written evidence:

“The ALMR believes that sales of alcohol airside at international airports should no longer be exempt from the application of the Act. The original exemption was only introduced because of practicalities relating to enforcement airside rather than any regulatory or policy concerns relating to its sale ... with no licence for alcohol sales, other operators who do not have the experience and training in alcohol retailing eg. coffee shops and quick service restaurants are unregulated.”<sup>584</sup>

616. The “practicalities relating to enforcement airside” to which the ALMR refer constitute the reason for the exemption given by the Home Office in their written evidence: “The exemption of premises serving alcohol airside from the licensing system is one of practicality. Airside access is tightly controlled. In order for the licensing system to be upheld, licences awarded to airside bars or restaurants must be capable of being inspected, if necessary through spot-checks as local authorities and the police consider appropriate.”<sup>585</sup> This was a view endorsed by the Minister. We put to her the point that airside access, though tightly controlled, can allow the access of large numbers of other staff, including the staff who sell the alcohol unregulated; and we challenged her repeatedly to explain why the Act should not apply airside. She could only reply that the Code was “effective” and “a better way of dealing with the problems”.<sup>586</sup>
617. We are not for one moment persuaded by this view. We believe, like the British Beer & Pub Association, that “those licensed to serve alcohol airside should abide by the principles of the Licensing Act 2003”.<sup>587</sup> However, unlike them, we believe that the best way of ensuring this is to make the Act apply, and not just its principles. We accept that access airside must be controlled, but see no reason whatever why some of the licensing enforcement officers

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582 Written evidence from Sussex Police ([LIC0042](#))

583 Written evidence from the Home Office ([LIC0175](#))

584 Written evidence from the ALMR ([LIC0150](#))

585 Written evidence from the Home Office ([LIC0155](#))

586 [Q 222](#) (Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office)

587 Written evidence from the BBPA ([LIC0111](#))

from each relevant local authority should not receive security clearance so that they can carry out their enforcement duties.

618. One way of achieving the application of the Licensing Act 2003 airside would be to repeal the relevant provisions of section 173, but this would require primary legislation. There is a quicker way. Under the Licensing Act 1964, the prohibition on the sale of alcohol outside permitted hours did not apply airside at international airports designated as such by an Order under section 87 of that Act. Orders were made over the years designating increasing numbers of airports as international airports. The last Order made under the 1964 Act was the Airports Licensing (Liquor) Order 2005<sup>588</sup> designating 23 airports in England and Wales as international airports.<sup>589</sup>
619. Section 173(1) of the 2003 Act repeats the provision that, in effect, disapplies the Act from activities airside at a “designated airport”, and subsection (4) provides that any airport where section 87 of the 1964 Act applied before the commencement of the 2003 Act will continue to be designated for the purposes of the 2003 Act. The airports designated under the 1964 Act by the Airports Licensing (Liquor) Order 2005 therefore continue to be exempt under the 2003 Act. But section 173(5) of the 2003 Act states that “provision may by order be made for subsection (4) to cease to have effect in relation to any port, airport or hoverport.” All the Minister therefore needs to do is make an Order under section 173(5) of the 2003 Act revoking the Airports Licensing (Liquor) Order 2005 and any other subsequent comparable Orders.<sup>590</sup> She will of course wish to give those selling alcohol airside notice of this so that they can apply for licences under the Act. We hope to see the Act applying airside by the end of this year.<sup>591</sup>
620. *The designations of airports as international airports for the purposes of section 173 of the Licensing Act 2003 should be revoked, so that the Act applies fully airside at airports, as it does in other parts of airports.*
621. *The 1964 and 2003 Acts both refer to ports and hoverports as well as to airports, so that the same arrangements can be made portside. Our discussion has centred on airports. Any similar designations made for ports and hoverports should also be revoked.*
622. **The sale of alcohol on a railway journey does not need to be licensed. We accept that the Act cannot sensibly apply to a moving train, and the railway companies have their own applicable bylaws. They also have the power where necessary to ban the sale and consumption of alcohol altogether, for example on train journeys to football matches. These powers seem to us adequate.**

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588 Airports Licensing (Liquor) Order 2005 ([SI 2005/1733](#))

589 Blackpool Airport had been omitted from the list and was added by the Blackpool Airport Licensing (Liquor) Order 2005 ([SI 2005/3119](#)).

590 Section 173(3) of the 2003 Act allows the Minister to designate further airports, but we are not aware that any Orders have been made under this power.

591 There are analogous provisions in the case of ports and hoverports. These can be designated under section 86A of the 1964 Act. The designation continues under section 173(4) of the 2003 Act, and can be revoked under section 173(5).

### Sale of alcohol to a person who is drunk

623. We heard many complaints concerning a widespread lack of enforcement of parts of the Licensing Act 2003. In particular, we were told that section 141, which makes it an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person on relevant premises, was being routinely flouted. Stricter enforcement, it was suggested to us, would help reduce pre-loading behaviour, as individuals who had already got drunk on cheaper off-trade-purchased alcohol could not then continue to drink at on-trade premises.<sup>592</sup>
624. This is reflected in the number of prosecutions for the offence—in 2015 there were only six, with no convictions, and indeed, there have only ever been 92 prosecutions, and 44 convictions, since the Act came into force in 2005. The offence has more commonly been dealt with by the issuing of a Penalty Notice for Disorder (a form of fixed penalty notice), which requires no formal court proceedings, and no admission of guilt from those accepting it, and carries a £90 fine. Between March 2005 and March 2016, 723 cases of sale of alcohol to a person who is drunk were dealt with in this way (averaging 66 cases per year).<sup>593</sup> For a similar class of offence, the sale of alcohol to a person aged under 18, there were 89 prosecutions and 73 convictions in 2015. This followed much high rates of prosecution in the late 2000s, which means that a total of 2,487 have been convicted of this offence.<sup>594</sup> Penalty Notices have also been used far more frequently for selling alcohol to a person under 18, with 22,014 issued between March 2005 and March 2016 (averaging 2001 cases per year).<sup>595</sup>
625. Indeed, while witnesses generally told us that they believed underage sales to be adequately policed, (although Berkshire Licensing Liaison Group warned that in this area “resources are becoming more scarce”<sup>596</sup>), there was much criticism of the lack of action and weak strategies deployed in the area of sales to drunk people. A number of witnesses pointed out that a significant hindrance was the lack of a clear definition for ‘being drunk’ in the Act. Kurnia Licensing Consultants pointed out that while it was “clear when someone has not had a drink and equally clear when someone has had too much to drink”, the problem is how to determine the point at which someone becomes drunk:

“This point is down to interpretation. Someone who might appear to be drunk to one person may not appear to be drunk to another. Medical conditions may also make someone think a person is drunk when in fact they are not ... Some people can consume alcohol and the effects may not show for some time ... The person may not have been drunk, or may not appeared to have been drunk, at the time of service but may become drunk sometime after.”<sup>597</sup>

592 For example, written evidence from Alcohol Research UK ([LIC0022](#)), (Nick Grant, Head of Legal Services, Sainsbury’s Supermarket Ltd). [Q 159](#)

593 Ministry of Justice, ‘Criminal Justice Statistics: Quarterly update to March 2016’ (18 August 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/546479/overview-tables.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546479/overview-tables.xlsx) [accessed 10 March 2017]

594 *Ibid.*

595 *Ibid.*

596 Written evidence from Berkshire Licensing Liaison Group ([LIC0122](#))

597 Written evidence from Kurnia Licensing Consultants Limited ([LIC0162](#))

626. There was also no clear sense among respondents as to how the offence of selling to a drunk person might be prosecuted in anything like a systematic manner. In order to prosecute the offence of selling alcohol to a person under the age of alcohol, officers may use underage individuals to conduct test purchases. The equivalent option, for obvious ethical reasons, cannot be pursued in the case of sales to a drunk person. John Miley, of the NALEO, told us that little work had been done in this field by the police or licensing authorities.
627. One of the few campaigns we are aware of which has attempted to focus on the problem of sales to drunken individuals was Liverpool's 'Drink Less, Enjoy More' campaign, conducted over 2015 and 2016. A joint initiative between Liverpool Council, Merseyside Police, CitySafe and Liverpool NHS Clinical Commissioning Group, it aimed to raise awareness of section 141, and reduce the number of occasions bar staff served those who were clearly drunk. The project was evaluated by Liverpool John Moores University using a team of 'pseudo-intoxicated' student actors to simulate drunken customers, and appeared to show a significant reduction in the proportion of successful alcohol test purchases by these actors (from 84% to 26%).<sup>598</sup> However, over the same period, the expected median consumption of alcohol on a night out increased substantially from 16 to 20 units. Mr Miley, when discussing this experiment with us, described the results as "very mixed".<sup>599</sup>
628. Alcohol Research UK argued that responsibility for tackling the issue had "largely been 'outsourced' to the alcohol industry through schemes such as Best Bar None and Purple Flag, few of which have undergone robust independent evaluation".<sup>600</sup> They recommended the introduction of a new "mandatory licensing condition requiring all outlets to produce a written policy on dealing with drunk customers".
629. **We are concerned that section 141 of the Licensing Act is not being properly enforced, and the few concerted attempts by local authorities to date have been lacklustre at best. Notwithstanding the difficulties of defining drunkenness, we believe that enforcement of section 141 needs to be taken far more seriously, and by doing so many of the problems currently associated with the Night Time Economy, in particular pre-loading and the excessive drunkenness and anti-social behaviour often linked with it, would be reduced.**

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598 Centre for Public Health Liverpool John Moores University, *Evaluation of the Liverpool Drink Less Enjoy More intervention* (March 2016): <http://www.cph.org.uk/wp-content/uploads/2016/03/Liverpool-Drink-Less-Enjoy-More-intervention-evaluation-report-March-2016.pdf> [accessed 10 March 2017]

599 **Q 54** (John Miley, National Chair, National Association of Licensing and Enforcement Officers)

600 Written evidence from Alcohol Research UK (**LIC0022**)

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The Background to the Act

1. We think it unfortunate that in the 11 years since the full implementation of the Licensing Act there have been piecemeal amendments made by nine different Acts of Parliament, a large number of significant amendments made by other Acts and by secondary legislation, and further changes to licensing law and practice made by amendment of the section 182 Guidance. (Paragraph 54)
2. We regret that there will no longer be any opportunity for Parliament to scrutinise the Guidance in draft, nor even to ensure that there has been adequate consultation during its preparation. (Paragraph 55)
3. *Assuming that minimum unit pricing is brought into force in Scotland, we recommend that once Scottish ministers have published their statutory assessment of the working of MUP, if that assessment demonstrates that the policy is successful, MUP should be introduced in England and Wales.* (Paragraph 86)
4. *We urge the Government to continue to look at other ways in which taxation and pricing can be used to control excessive consumption.* (Paragraph 87)

### The Licensing Process

5. We appreciate that we are perhaps more likely to receive evidence critical of the way the licensing process operates than evidence saying it operates well or better. We believe—we certainly hope—that most members of licensing committees take their responsibilities seriously, adopt a procedure which is fair and seen to be fair, are well advised, and reach sensible conclusions. But clearly reform of the system is essential. (Paragraph 116)
6. *Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees. We recommend that this proposal should be trialled in a few pilot areas.* (Paragraph 154)
7. *We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible.* (Paragraph 155)

### Appeals

8. *Licensing authorities should publicise the reasons which have led them to settle an appeal, and should hesitate to compromise if they are effectively reversing an earlier decision which residents and others intervening may have thought they could rely on.* (Paragraph 173)
9. *We recommend that appeals from licensing authorities should no longer go to magistrates' courts, but should lie to the planning inspectorate, following the same course as appeals from planning committees. This change is not dependent on the outcome of our recommendations on the licensing function, and should be made as soon as possible.* (Paragraph 206)

### Immediate Changes

10. *The section 182 Guidance should be amended to make clear the responsibility of the chair of a licensing committee for enforcing standards of conduct of members of*



*sub-committees, including deciding where necessary whether individual councillors should be disqualified from sitting, either in particular cases or at all. (Paragraph 213)*

11. *We recommend that the Home Office discuss with the Local Government Association, 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 the length, form and frequency of refresher training. (Paragraph 218)*
12. *The section 182 Guidance should be amended to introduce a requirement that a councillor who is a member of a licensing committee must not take part in any proceedings of the committee or a sub-committee until they have received training to the standard set out in the Guidance. (Paragraph 220)*
13. *We recommend that where there are no longer any matters in dispute between the parties, a sub-committee which believes that a hearing should nevertheless be held should provide the parties with reasons in writing. (Paragraph 222)*
14. *The Hearings Regulations must be amended to state that the quorum of a sub-committee is three. (Paragraph 229)*
15. *Regulations 21 and 23 of the Hearings Regulations leave everything to the discretion of the committee. They regulate nothing. They should be revoked. (Paragraph 230)*
16. *The section 182 Guidance should indicate the degree of formality required, the structure of hearings, and the order in which the parties should normally speak. It should make clear that parties must be allowed sufficient time to make their representations. (Paragraph 231)*
17. *We recommend that where on a summary review a licence is revoked and the livelihood of the licensee is at stake, magistrates' courts should list appeals for hearing as soon as they are ready. (Paragraph 236)*
18. *We recommend that notice of an application should not need to be given by an advertisement in a local paper. Notices should be given predominantly by online notification systems run by the local authority. (Paragraph 242)*
19. *Local authorities should ensure that blue licensing notices, as for planning applications, should continue to be placed in shop windows and on street lights in prominent positions near the venue which is the subject of the application. (Paragraph 243)*
20. *Coordination between the licensing and planning systems can and should begin immediately in all local authorities. The section 182 Guidance should be amended to make clear that a licensing committee, far from ignoring any relevant decision already taken by a planning committee, should take it into account and where appropriate follow it; and vice versa. (Paragraph 246)*

### **The Licensing Objectives**

21. **We have received submissions in both written and oral evidence that three further objectives should be added to the four already listed. Our consideration of them is based on our view that the objectives are not a list of matters which it would be desirable to achieve, but simply an exhaustive list of the grounds for refusing an application or imposing conditions. There is therefore no point in including as an objective something which cannot be related back to particular premises. (Paragraph 250)**

22. *Promotion of health and well-being is a necessary and desirable objective for an alcohol strategy, but we accept that it is not appropriate as a licensing objective. (Paragraph 261)*
23. *We do not recommend that “enjoyment of licensable activities”, “the provision of social or cultural activities”, or anything similar, should be added as a licensing objective. (Paragraph 265)*
24. *We do not recommend adding as a licensing objective “compliance with the Equality Act 2010” or “securing accessibility for disabled persons”. (Paragraph 272)*
25. *We recommend that the law should be amended to require, as in Scotland, that an application for a premises licence should be accompanied by a disabled access and facilities statement. (Paragraph 277)*

### **The Off-Trade**

26. *We do not recommend that powers to ban super-strength alcohol across many premises simultaneously be granted to local authorities. (Paragraph 309)*
27. **The Coalition Government’s Responsibility Deal on alcohol did not achieve its objectives, and appears to have been suspended. We believe much more still needs to be done to tackle the production of super-strength, low-cost alcoholic products. If and when any similar schemes are developed in the future, there must be greater provision for monitoring and maintaining them, and greater collaboration between all parties involved, including both public health experts and manufacturers. They should also account for the realities of super-strength alcohol, with particular focus on, for example, ABV rather than the specificities of packaging. (Paragraph 310)**
28. *We believe that proposed Group Review Intervention Powers, which would give local authorities the power to introduce mandatory blanket conditions on all premises in a particular area, should not be introduced. As a blanket approach to problems which can normally be traced back to particular premises, they are likely to suffer from the same problems as Early Morning Restriction Orders, and the same results can be achieved through existing means. (Paragraph 316)*
29. **While there appears to be some merit to a few voluntary schemes, the majority, and in particular the Government’s Responsibility Deal, are not working as intended. We believe there are limits to what can be achieved in this way, and many of the worst operators will probably never comply with voluntary agreements. We strongly believe that the Alcohol etc. (Scotland) Act 2010 offers a proportionate and practical basis for measures specifically regulating the off-trade. (Paragraph 321)**
30. *We recommend that legislation based on Part 1 of the Alcohol etc. (Scotland) Act 2010 should be introduced in England and Wales at the first available opportunity. In the meantime, the section 182 Guidance should be amended to encourage the adoption of these measures by the off-trade. (Paragraph 322)*

### **Temporary Event Notices**

31. *Temporary Event Notices are used for a wide range of purposes, and the impact of a particular event on local residents cannot be reliably determined by whether they fall into broad ‘community’ and ‘commercial’ categories. We do not recommend the division of the current TENs system into ‘community’ and ‘commercial’. (Paragraph 344)*

32. *We recommend that licensing authorities be given the power to object to Temporary Event Notices, alongside police and environmental health officers. A system for notifying local councillors and local residents of TENs in a timely fashion should also be implemented. (Paragraph 349)*
33. *We recommend that section 106(2) of the Licensing Act 2003 be amended, replacing the words “before a hearing” with “before or during a hearing”, to enable TENs to be amended during a hearing if agreement is reached. (Paragraph 352)*
34. *Where it appears that notices are being given for TENs simultaneously on adjacent plots of land, resulting in effect in the maximum number attending exceeding the 500 person limit, we would expect the police or environmental health officers to object, and the licensing authority to issue a counter-notice. We recommend that the section 182 Guidance be amended to make this clear. (Paragraph 354)*
35. *Although it is difficult to know whether the inadequate recording of TENs is widespread among local councils, we recommend that the section 182 Guidance be strengthened and clarified with respect to the collection and retention of TENs. It should clarify what personal information should be retained and in which particular format. (Paragraph 357)*
36. *This information must be retained in a system allowing for its quick and easy retrieval, both by local authorities and by the public, and in such a way that local and national statistical data can be produced from them. The national GOV.UK platform should be used for receiving and processing TENs. (Paragraph 358)*
37. *We recommend that section 67 of the Deregulation Act 2015, relating to Community and Ancillary Sellers’ Notices, should not be brought into force, and should be repealed in due course. (Paragraph 368)*

### **Crime, Disorder and Public Safety**

38. **We are convinced that licensing is a sufficiently specialist and technical area of policing, requiring a distinct and professional body of police licensing specialists. Although we are aware of the many demands currently placed on police resources, the proper and attentive licensing of premises has a considerable if sometimes indirect impact on public reassurance and wider aspects of crime and disorder. It is therefore important that the role of police licensing officers should not be diluted or amalgamated, as evidence suggests is occurring in some constabularies. They do not need to be sworn police officers, and in many cases it may indeed be preferable that this role be performed by civilian police staff. (Paragraph 379)**
39. *We recommend the development and implementation of a comprehensive police licensing officer training programme, designed by the College of Policing. While we accept that such an undertaking will require additional funds, these costs will likely be more than offset if the quality of police licensing decisions is improved, thereby reducing the number of appeals and other corrective procedures. (Paragraph 388)*
40. **We believe it is highly likely that licensing committees will take police evidence seriously, especially if it is presented in a consistent and compelling fashion, regardless of whether they are required to by the section 182 Guidance. The risk that presently exists is that this additional emphasis could lead some licensing committees to partially or fully abdicate their responsibility to scrutinise police evidence to the same high standards as they would any other evidence. Our evidence suggests this is indeed occurring in some areas. It**

is entirely wrong that police evidence should be given more weight than it deserves solely because of its provenance. (Paragraph 400)

41. *Given evidence that paragraph 9.12 of the section 182 Guidance is being misinterpreted by licensing committees, and the fact that similar sentiments, more clearly stated, are already expressed in paragraph 2.1 of the Guidance, we recommend that paragraph 9.12 be removed.* (Paragraph 401)
42. We support the Government's current move to transfer Cumulative Impact Policies from the section 182 Guidance and to place them on a statutory footing, as this will introduce much needed transparency and consistency in this area. (Paragraph 409)
43. We agree with criticism of the drafting of the new section 5(5A) of the Act, as it threatens to remove discretion from local authorities on how they may interpret their own cumulative impact policies. (Paragraph 412)
44. We were surprised to learn that the Home Office have not collected centralised figures on the use of relatively serious police powers until now, and that figures relating to section 169A closure notices are presented in such a confusing and misleading way. (Paragraph 416)
45. *We recommend that the section 182 Guidance be amended to make clear that the service of a Closure Notice pursuant to section 19 of the Criminal Justice and Police Act 2001 does not:*
  - *require the premises to close or cease selling alcohol immediately; or*
  - *entitle the police to require it to do so; or*
  - *entitle the police to arrest a person on the sole ground of non-compliance with the notice.* (Paragraph 421)
46. We sympathise with the police, practitioners and businesses who cannot always fully comprehend the complex process surrounding interim steps. We conclude that instead of conferring discretion upon the sub-committee to impose further interim steps upon a licensee pending appeal, a discretion to impose with immediate effect the determination that the sub-committee reached upon the full review would be preferable. This final decision must represent the sub-committee's more mature reflection upon the situation, based upon the most up to date evidence, and this ought to be the decision that binds the licensee, if immediacy is a requirement, rather than the superseded interim steps. (Paragraph 431)
47. *Within the Anti-Social Behaviour, Crime and Policing Act 2014, the power of the magistrates to "modify" the closure order is curious wording, which has already perplexed the magistrates' courts, given that the magistrates are just as likely to be invited to exercise their power to lift the revocation and re-open premises at a time when the original closure order has expired as they are during the currency of that closure order. We recommend a clarification of this wording.* (Paragraph 436)

### **The Night-Time Economy**

48. We believe that the appointment of the Night Czar and other champions of the night time economy (NTE) has the potential to help develop London's NTE and ease the inevitable tensions that arise between licensees, local authorities and local residents. We believe that greater transparency should



be expected of these roles if they are to secure the co-operation and trust of key parties in London's NTE. In time Night Mayors may also offer a model to other cities in the UK. (Paragraph 450)

49. *We believe it is appropriate that no Early Morning Restriction Orders have been introduced and we recommend that, in due course, the provisions on EMROs should be repealed.* (Paragraph 466)
50. While we acknowledge the concerns of local residents, we believe that overall the Night Tube is likely to have a positive impact for London's late night licensed premises, their staff, and local residents. Not only will it provide a welcome boost to London's night-time economy, which must be allowed to grow if London is to continue to prosper as a global city in the 21st century, but it may well also bring advantages for residents by dispersing crowds more effectively and efficiently. (Paragraph 472)
51. The Late Night Levy was introduced in large part to require businesses which prosper from the night time economy to contribute towards the cost of policing it. Yet the evidence we have heard suggests that in practice it can be very difficult to correlate the two with any degree of precision, which contributes to the impression, held by many businesses, that the levy is serving as a form of additional general taxation, and is not being put towards its intended purpose. (Paragraph 487)
52. We have received from ministers, verbally and in writing, categorical assurances that the provisions of the Policing and Crime Act 2017 regarding Late Night Levies will not be implemented until the Government has considered and responded to the recommendations in this report. (Paragraph 501)
53. *Given the weight of evidence criticising the Late Night Levy in its current form, we believe on balance that it has failed to achieve its objectives, and should be abolished. However we recognise that the Government's amendments may stand some chance of successfully reforming the Levy. We recommend that legislation should be enacted to provide that sections 125 to 139 of the Police and Social Responsibility Act 2011 and related legislation should cease to have effect after two years unless the Government, after consulting local authorities, the police and others as appropriate, makes an order subject to affirmative resolution providing that the legislation should continue to have effect.* (Paragraph 502)
54. *If the Government, contrary to our recommendation to abolish the Late Night Levy, decides to retain it, we further recommend that Regulations be made under section 131(5) of the Police Reform and Social Responsibility Act 2011 amending section 131(4) of the Act, abolishing the current 70/30 split, and requiring that Late Night Levy funds be divided equally between the police and local authorities.* (Paragraph 503)
55. *The EU Services Directive is an additional consideration which could have implications for the legality of the Late Night Levy. If the Government, contrary to our recommendation, decides to retain the Late Night Levy, the Home Office should satisfy itself that any further action relating to the Late Night Levy complies with the EU Services Directive.* (Paragraph 505)
56. We welcome all the initiatives of which we heard evidence, including BIDs, Best Bar None, Purple Flag and others, and recognise the effort which goes into them and the potential they have to control impacts and improve conditions in the night time economy. We commend the flexibility which such



schemes appear to offer, and the bespoke way in which they are developed to match the needs of their locality. (Paragraph 518)

57. We welcome the initiative of local authorities such as Cheltenham which *have abandoned Late Night Levies in favour of Business Improvement Districts. While recognising that local authorities cannot impose Business Improvement Districts in the same way that they can Late Night Levies, we recommend that other local authorities give serious consideration to initiating and supporting Business Improvement Districts and other alternative initiatives.* (Paragraph 520)

### **Live Music**

58. We believe that the Live Music Act 2012 is working broadly as intended, but that there is not presently a case for further deregulation, let alone the complete removal of all live music-related regulation from the Licensing Act 2003. (Paragraph 541)
59. *We recommend that more be done to spread awareness of the provisions of the Live Music Act 2012 and its implications for licensed premises among local councils, licensed premises and local residents.* (Paragraph 542)
60. *We recommend that a full 'Agent of Change' principle be adopted in both planning and licensing guidance to help protect both licensed premises and local residents from consequences arising from any new built development in their nearby vicinity.* (Paragraph 553)

### **Fees and Fee Multipliers**

61. *We recommend that section 121 of the Police Reform and Social Responsibility Act 2011 be brought into force, and new Fees Regulations made requiring licensing authorities to set licensing fees.* (Paragraph 565)
62. *The Opinion of the Advocate-General in the case of Hemming has cast doubt on the legality of any element of a licensing fee which goes beyond the cost to a licensing authority of processing an application. Accordingly we consider that it would not be sensible to recommend the extension of the fee multiplier to supermarkets at this time.* (Paragraph 581)
63. *We recommend that the Home Office should consider whether the Fees Regulations should be amended to make them compatible with the EU Services Directive and the Provision of Services Regulations 2009.* (Paragraph 582)
64. *If, as we recommend, the power to set licence fees is devolved to licensing authorities, then this power will inevitably have to be constrained by any conclusion which the Home Office draws on the compatibility of fees generally with the Directive and Regulations.* (Paragraph 583)

### **Other Matters of Importance**

65. *We recommend further development of the GOV.UK platform for licensing applications, to ensure that it is working with local authority computer systems, and fully compatible with the provisions of the Licensing Act 2003. In due course, its uniform adoption by all local authorities in England and Wales should be encouraged by the Government and the section 182 Guidance updated accordingly.* (Paragraph 590)
66. *We believe the enforcement of section 128 and 132A of the Licensing Act 2003 would be facilitated by a national database of personal licence holders, against which*

*to check those who are convicted of relevant offences. We recommend the creation of a national database of personal licence holders for use by courts and licensing authorities, linked to the Police National Database. (Paragraph 594)*

67. *We do not recommend that licensing committees be given the power to suspend or revoke a premises licence for non-payment of business rates. (Paragraph 599)*
68. The evidence we received on the application of the Act specifically to clubs suggests that they have adapted to it well. (Paragraph 609)
69. *Given the decline in most forms of members' clubs, and the social value they hold in many communities, we believe that even minor adjustments which may help them should be made. We therefore recommend the removal of Conditions 1 and 2 by the repeal of section 62 (2) and (3) of the Licensing Act 2003, abolishing the two-day waiting period required of new members. We acknowledge that at least some clubs will want to keep this waiting period in their club rules, and they will still be entitled to do so. (Paragraph 610)*
70. *The designations of airports as international airports for the purposes of section 173 of the Licensing Act 2003 should be revoked, so that the Act applies fully airside at airports, as it does in other parts of airports. (Paragraph 620)*
71. *The 1964 and 2003 Acts both refer to ports and hoverports as well as to airports, so that the same arrangements can be made portside. Our discussion has centred on airports. Any similar designations made for ports and hoverports should also be revoked. (Paragraph 621)*
72. The sale of alcohol on a railway journey does not need to be licensed. We accept that the Act cannot sensibly apply to a moving train, and the railway companies have their own applicable bylaws. They also have the power where necessary to ban the sale and consumption of alcohol altogether, for example on train journeys to football matches. These powers seem to us adequate. (Paragraph 622)
73. We are concerned that section 141 of the Licensing Act is not being properly enforced, and the few concerted attempts by local authorities to date have been lacklustre at best. Notwithstanding the difficulties of defining drunkenness, we believe that enforcement of section 141 needs to be taken far more seriously, and by doing so many of the problems currently associated with the Night Time Economy, in particular pre-loading and the excessive drunkenness and anti-social behaviour often linked with it, would be reduced. (Paragraph 629)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Blair of Boughton  
Lord Brooke of Alverthorpe  
Lord Clement-Jones (resigned 14 June 2016)  
Lord Davies of Stamford  
Baroness Eaton (appointed 13 September 2016)  
Lord Foster of Bath (appointed 14 June 2016)  
Baroness Goudie  
Baroness Grender  
Lord Hayward (resigned 5 September 2016)  
Baroness Henig  
Lord Mancroft  
Baroness McIntosh of Pickering (Chairman)  
Lord Smith of Hindhead  
Baroness Watkins of Tavistock

### Declarations of interest

Lord Blair of Boughton  
*Long service as a police policy maker including this area of law*

Lord Brooke of Alverthorpe  
*Vice Chair, All Party Parliamentary Group on alcohol harm*  
*Patron, British Liver Trust*  
*Patron, Kenward Trust—alcohol and drug rehabilitation centre*  
*Member, All Party Parliamentary Group on obesity*

Lord Clement-Jones  
*Sponsored the Bill for the Live Music Act 2012 in the House of Lords*

Lord Davies of Stamford  
*No relevant interests*

Baroness Eaton  
*Former Chairman and currently a Vice-President of the Local Government Association*

Lord Foster of Bath  
*As a Member of the House of Commons, sponsored the Bill for the Live Music Act 2012*

Baroness Goudie  
*No relevant interests*

Baroness Grender  
*Held a Temporary Event Notice for a school summer fair on 9 July 2016, and has regularly done so on a bi-annual basis for the past 4 years*

Lord Hayward (resigned 5 September 2016)  
*Financial interests in Marston's, Diageo and Greene King*  
*Former CEO of the British Beer and Pub Association (BBPA), and retains personal links with members of the industry.*  
*As CEO of the BBPA, led for the whole industry in discussions with the then government on the introduction of the Licensing Act.*  
*Member, All Party Parliamentary Group on beer*

**Baroness Henig**

*Non-Executive Chairman, SECURIGROUP Ltd (provides, amongst other things, door supervisors to pub chains)*

*President, Security Institute (presides over professional qualifications for those in security industry)*

*Committee member, All Party Parliamentary Group on beer*

*Member, All Party Parliamentary Group on wine and spirits*

**Lord Mancroft**

*No relevant interests*

**Baroness McIntosh of Pickering (Chairman)**

*Non-practising Member of the Faculty of Advocates*

*Honorary President, Pickering Conservative Club*

*Member, All Party Parliamentary Group on beer*

*Member, All Party Parliamentary Group on wine and spirits*

*Member, All Party Parliamentary Group on food and drink manufacturing  
Shareholding in Diageo*

*Briefings and hospitality from the Scotch Whisky Association*

*As an MEP, in approx. 1996–98 was assisted by David Williamson, now Public Affairs and Communications Director of the Scotch Whisky Association*

**Lord Smith of Hindhead**

*Chief Executive, The Association of Conservative Clubs (ACC Ltd)*

*Chairman, Committee of Registered Club Associations*

*Executive Committee, All Party Parliamentary Group on beer*

*Executive Committee, All Party Parliamentary Group on non-profit making clubs*

*Director, Dawlish Constitutional Club Company Ltd*

*Trustee (in the capacity of CEO of ACC Ltd) of up to 200 Conservative Clubs throughout the UK*

**Baroness Watkins of Tavistock**

*No relevant interests*

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

**Sarah Clover, (Specialist Adviser)**

*Barrister, Kings Chambers, Birmingham*

*Chair of the Institute of Licensing, West Midlands Region*

*Board Member, Institute of Licensing*

*Counsel acting in a number of cases to which reference is made in this report*

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at [www.parliament.uk/licensing-act-committee](http://www.parliament.uk/licensing-act-committee) and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral evidence and written evidence. Those marked with a \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

- |    |   |                          |
|----|---|--------------------------|
| ** | Andy Johnson, Head of Alcohol, Home Office  | <a href="#">QQ 1–15</a>  |
| ** | Anna Paige, Head of Drugs and Alcohol Unit/Drugs and Firearms Licensing Unit, Home Office                         |                          |
| *  | Kate McGavin, Deputy Director of Media and Creativity, Department for Culture, Media and Sport                    |                          |
| *  | Lindsay Wilkinson Deputy Director - Drug and Alcohol Policy, Department of Health                                 |                          |
| *  | Rosanna O'Connor, Director, Alcohol, Drugs & Tobacco, Public Health England                                       |                          |
| ** | Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion, Local Government Association | <a href="#">QQ 16–30</a> |
| *  | Councillor Debbie Mason, Portfolio Holder for Safety and Well-being, Rushcliffe Borough Council                   |                          |
|    | David Banks, Executive Manager Neighbourhoods, Rushcliffe Borough Council   |                          |
| ** | Councillor James Lewis, Deputy Leader and Executive Member for Resources and Strategy, Leeds City Council         |                          |
| *  | Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council |                          |
| *  | Steve Quartermain CBE, Chief Planning Officer, Department for Communities and Local Government                    | <a href="#">QQ 31–40</a> |
| ** | Jon Foster, Institute of Alcohol Studies  | <a href="#">QQ 41–53</a> |
| *  | Chris Snowdon, Institute of Economic Affairs  |                          |
| ** | Daniel Davies, National Chairman, Institute of Licensing  | <a href="#">QQ 54–62</a> |
| ** | John Miley, National Chair, National Association of Licensing and Enforcement Officers                            |                          |
|    | Marie-Claire Frankie, Licensing Solicitor, National Association of Licensing and Enforcement Officers             |                          |



- \* Michael Kheng, Chair, Midlands Region, British Institute of Innkeeping
- \*\* James Lowman, Chief Executive, Association of Convenience Stores [QQ 63–69](#)
- \* Gill Sherratt, Director, Licensing Matters
- \*\* Miles Beale, Chief Executive, Wine and Spirit Trade Association
- \*\* Dr Alan Shrank, Chairman, National Organisation of Residents Associations [QQ 70–77](#)  
Councillor Carol Davies, National Organisation of Residents Associations
- \* Richard Brown, Licensing Solicitor, Westminster Citizens Advice
- \*\* Patricia Thomas, Chair, Harmood, Clarence, Hartland Residents Association
- \*\* Tim Page, Chief Executive, Campaign for Real Ale [QQ 78–89](#)
- \*\* Stuart Gallyot, Company Secretary and Director of Legal & Estates, Punch Taverns
- \*\* Robert Humphreys, Non-Executive Director, Society of Independent Brewers
- \*\* Brigid Simmonds, Chief Executive, British Beer and Pub Association [QQ 90–101](#)
- \*\* Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers
- \*\* Vernon Hunte, Government Affairs Director, British Hospitality Association
- \*\* Professor Sir Ian Gilmore, Chair, Alcohol Health Alliance [QQ 102–112](#)
- \* Adrian Boyle, Chair of the Quality Emergency Care Committee, Royal College of Emergency Medicine
- \*\* Dr Jeanelle de Gruchy, Vice-President, Association of Directors of Public Health
- \* Professor Colin Drummond, Chair of the Faculty of Addictions Psychiatry, Royal College of Psychiatrists
- \*\* John Gaunt, Partner, John Gaunt and Partners [QQ 113–123](#)
- \*\* Andrew Grimsey, Solicitor, Poppleston Allen
- \*\* Professor Roy Light, Barrister, St John’s Chambers
- \* Senior District Judge Emma Arbuthnot, Chief Magistrate [QQ 124–132](#)
- \* District Judge Elizabeth Roscoe, Westminster Magistrates’ Court

- \* Sheena Jowett JP, Deputy Chairman, Magistrates' Association
- \* Chief Superintendent Gavin Thomas, Police Superintendents Association [QQ 133–143](#)
- \*\* Assistant Chief Constable Rachel Kearton, National Police Chiefs' Council
- \*\* Alison Hernandez, Police and Crime Commissioner for Devon and Cornwall
- \*\* Gerald Gouriet QC [QQ 144–154](#)
- \* Andrew Cochrane, Senior Partner and Head of Licensing, Flint Bishop Solicitors
- \* Paul Douglas, Managing Director, Douglas Licensing (NW)
- \*\* Nick Grant, Head of Legal Services, Sainsbury's Supermarkets Ltd [QQ 155–165](#)
- \* James Brodhurst-Brown, Manager, Regulatory Affairs and Trading Law, Waitrose
- \* Mark Bentley, Customer Operations Director, Ocado
- \* Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors [QQ 166–172](#)
- \* Paul Varney, Association of London Clubs
- \*\* George Dawson, Union President, Working Men's Club and Institute Union Limited
- \* Leenamari Aantaa-Collier [QQ 173–182](#)
- \*\* Anthony Lyons, Partner, Kuit Steinart Levy LLP
- \* Karl Suschitzky, Environmental Health Officer, Derby City Council
- \*\* Peter Rogers, Managing Director, Sustainable Acoustics
- \*\* Alan Miller, Night Time Industries Association [QQ 183–196](#)
- \*\* Peter Marks, Chief Executive, The Deltic Group
- \* Ron Reid, Shoosmith's, on behalf of McDonald's
- \* Ibrahim Dogus, British Kebab and Retail Awards
- \*\* Paul Latham, UK Live Music Group [QQ 197–207](#)
- \*\* Mark Davyd, Music Venue Trust
- \*\* Alex Mann, Musicians' Union
- \*\* Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office [QQ 208–227](#)

- \* Nicola Blackwood MP, Parliamentary Under-Secretary of State for Public Health and Innovation, Department of Health

### Alphabetical list of all witnesses

- \* Leenamari Aantaa-Collier ([QQ 173–182](#))
- Access Association [LIC0055](#)
- Action with Communities in Rural England [LIC0059](#)
- Admiral Taverns [LIC0124](#)
- Alcohol Concern [LIC0085](#)
- Alcohol Focus Scotland [LIC0127](#)
- \*\* Alcohol Health Alliance UK (Professor Sir Ian Gilmore, Chair: [QQ 102–112](#)) [LIC0078](#)
- Alcohol Research UK [LIC0022](#)
- \* Senior District Judge Emma Arbuthnot, Chief Magistrate ([QQ 124–132](#))
- Ashford Borough Council [LIC0016](#)
- \*\* Association of Convenience Stores (James Lowman, Chief Executive: [QQ 63–69](#)) [LIC0086](#)
- \*\* Association of Directors of Public Health (Dr Jeanelle de Gruchy, Vice-President: [QQ 102–112](#)) [LIC0064](#)
- \*\* Association of Licensed Multiple Retailers (Kate Nicholls, Chief Executive: [QQ 90–101](#)) [LIC0150](#)
- \* Association of London Clubs (Paul Varney: ([QQ 166–172](#)))
- Attitude is Everything [LIC0091](#)
- Avon and Somerset Constabulary [LIC0081](#)
- Balance North East Alcohol Office [LIC0023](#)
- Keith Barker-Main [LIC0001](#)
- Bath City Centre Action Group [LIC0036](#)
- Jez Bayes [LIC0015](#)
- Beds & Bars [LIC0114](#)
- Berkshire Licensing Liaison Group [LIC0122](#)
- Bilton Hall Amateur Boxing Club [LIC0012](#)
- Birmingham City Council Licensing and Environmental Health [LIC0141](#)
- Breckland Council [LIC0120](#)
- Brighton and Hove Council [LIC0017](#)
- \*\* British Beer & Pub Association (Brigid Simmonds, Chief Executive: [QQ 90–101](#)) [LIC0111](#)  
[LIC0159](#)

**	British Hospitality Association (Vernon Hunte, Government Affairs Director <a href="#">QQ 90–101</a> )	<a href="#">LIC0149</a>
*	British Institute of Innkeeping (Michael Kheng, Chair, Midlands Region: <a href="#">QQ 54–62</a> )	
*	British Kebab and Retail Awards (Ibrahim Dogus: <a href="#">QQ 183–196</a> )	
	British Medical Association	<a href="#">LIC0041</a>
	British Retail Consortium	<a href="#">LIC0167</a>
	Broxtowe Borough Council	<a href="#">LIC0138</a>
	Councillor Jonny Bucknell	<a href="#">LIC0152</a>
	Business in Licensing	<a href="#">LIC0140</a>
	Cambridge City Council	<a href="#">LIC0108</a>
	Cambridgeshire County Council Public Health Directorate	<a href="#">LIC0123</a>
**	Campaign for Real Ale (Tim Page, Chief Executive: <a href="#">QQ 78–89</a> )	<a href="#">LIC0121</a>
	Cardiff County Council	<a href="#">LIC0082</a>
	Central Bedfordshire Licensing Committee	<a href="#">LIC0142</a>
	Central England Trading Standards	<a href="#">LIC0021</a>
	Champs Public Health Collaborative	<a href="#">LIC0038</a>
	Chelston Cockington and Livermead Community Partnership	<a href="#">LIC0009</a>
	Cheshire Constabulary	<a href="#">LIC0043</a>
	Cheshire East Council	<a href="#">LIC0039</a>
	Citizens Advice Westminster	<a href="#">LIC0132</a> <a href="#">LIC0161</a>
	City of London Corporation	<a href="#">LIC0154</a>
	City of Wolverhampton Council	<a href="#">LIC0095</a>
	Clifton Down Community Association	<a href="#">LIC0079</a>
	Cornwall Council Licensing Authority	<a href="#">LIC0069</a>
	Covent Garden Community Association	<a href="#">LIC0118</a>
	Reba Danson	<a href="#">LIC0125</a>
**	Deltic Group (Peter Marks, Chief Executive: <a href="#">QQ 183–196</a> )	<a href="#">LIC0163</a>
*	Department for Communities and Local Government (Steve Quartermain CBE, Chief Planning Officer <a href="#">QQ 31–40</a> )	
*	Department for Culture, Media and Sport (Kate McGavin, Deputy Director of Media and Creativity: <a href="#">QQ 1–15</a> )	

*	Department of Health (Lindsay Wilkinson, Deputy Director , Drug and Alcohol Policy: <a href="#">QQ 1-15</a> ) Nicola Blackwood MP, Parliamentary Under-Secretary of State for Public Health and Innovation ( <a href="#">QQ 208-227</a> )	
*	Derby City Council (Karl Suschitzky, Environmental Health Officer: <a href="#">QQ 173-182</a> ) Derbyshire Police	<a href="#">LIC0028</a>
	Devon Licensing Officers Group	<a href="#">LIC0075</a>
*	Douglas Licensing (NW), (Paul Douglas, Managing Director <a href="#">QQ 144-154</a> ) Durham Constabulary	<a href="#">LIC0045</a>
	Ealing Civic Society	<a href="#">LIC0129</a>
*	Emms Gilmore Liberson Solicitors (Peter Adkins, Director of Regulatory Services: <a href="#">QQ 166-172</a> ) Equity	<a href="#">LIC0071</a>
	Fabric Life Limited	<a href="#">LIC0157</a>
	Faculty of Occupational Medicine & Society of Occupational Medicine	<a href="#">LIC0143</a>
	Federation of Bath Residents' Associations	<a href="#">LIC0031</a>
	Federation of Wholesale Distributors	<a href="#">LIC0061</a>
*	Flint Bishop Solicitors (Andrew Cochrane, Partner and Head of Licensing: <a href="#">QQ 144-154</a> ) Matthew France	<a href="#">LIC0089</a>
	Councillor Bill Gifford	<a href="#">LIC0113</a>
	Gloucestershire Licensing Officer's Group	<a href="#">LIC0101</a>
**	Gerald Gouriet QC ( <a href="#">QQ 144-154</a> ) Greater Manchester Combined Authority	<a href="#">LIC0056</a> <a href="#">LIC0165</a> <a href="#">LIC0103</a>
	Clive Grunshaw	<a href="#">LIC0147</a>
**	Harmood, Clarence, Hartland Residents Association (Patricia Thomas, Chair: <a href="#">QQ 70-77</a> ) Healthier Futures	<a href="#">LIC0033</a> <a href="#">LIC0169</a> <a href="#">LIC0097</a>
	Heart of London Business Alliance	<a href="#">LIC0128</a>
	Henrietta Park Residents' Association	<a href="#">LIC0109</a>
	Hinckley & Bosworth Borough Council	<a href="#">LIC0049</a>
**	Home Office (Andy Johnson, Head of Alcohol, Anna Paige, Head of Drugs and Alcohol Unit/Drugs and Firearms Licensing Unit: <a href="#">QQ 1-15</a> )	<a href="#">LIC0063</a> <a href="#">LIC0155</a> <a href="#">LIC0164</a> <a href="#">LIC0175</a>



	Sarah Newton MP, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism ( <a href="#">QQ 208–227</a> )	
**	Institute of Alcohol Studies (Jon Foster: <a href="#">QQ 41–53</a> )	<a href="#">LIC0047</a>
*	Institute of Economic Affairs (Chris Snowdon: <a href="#">QQ 41–53</a> )	
**	Institute of Licensing (Daniel Davies, National Chairman: <a href="#">QQ 54–62</a> )	<a href="#">LIC0126</a>
	Jet2.com	<a href="#">LIC0156</a>
**	John Gaunt and Partners (John Gaunt, Partner: <a href="#">QQ 113–123</a> )	<a href="#">LIC0054</a> <a href="#">LIC0171</a>
	Joshua Simons & Associates Ltd	<a href="#">LIC0133</a>
	Kent Police	<a href="#">LIC0083</a>
	Kingscliffe Society	<a href="#">LIC0146</a>
**	Kuit Steinart Levy LLP (Anthony Lyons, Partner: <a href="#">QQ 173–182</a> )	<a href="#">LIC0098</a>
	Kurnia Licensing Consultants Limited	<a href="#">LIC0162</a>
	Lancashire Constabulary	<a href="#">LIC0139</a>
	Christopher Lear	<a href="#">LIC0003</a>
**	Leeds City Council (Councillor James Lewis, Deputy Leader and Executive Member for Resources and Strategy: <a href="#">QQ 16–30</a> )	<a href="#">LIC0034</a>
	Leicester, Leicestershire and Rutland Licensing Forum	<a href="#">LIC0013</a>
*	Licensing Matters (Gill Sherratt, Director: <a href="#">QQ 63–69</a> )	
**	Professor Roy Light, Barrister, St John’s Chambers ( <a href="#">QQ 113–123</a> )	<a href="#">LIC0168</a>
	Little Theatre Guild of Great Britain	<a href="#">LIC0065</a>
**	Local Government Association (Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion: <a href="#">QQ 16–30</a> )	<a href="#">LIC0062</a> <a href="#">LIC0099</a>
	London Borough of Hackney	<a href="#">LIC0136</a>
	London Borough of Havering	<a href="#">LIC0068</a>
	London Borough of Hounslow	<a href="#">LIC0025</a>
	London Borough of Lambeth	<a href="#">LIC0134</a>
	London Borough of Newham	<a href="#">LIC0044</a>
*	Magistrates’ Association (Sheena Jowett JP, Deputy Chairman: <a href="#">QQ 124–132</a> )	
	Mayor of London	<a href="#">LIC0173</a>
*	McDonald’s (Ron Reid, Shoosmith’s, on behalf of McDonald’s: <a href="#">QQ 183–196</a> )	

	Malcolm McKessar	<a href="#">LIC0011</a>
	Medway Public Health	<a href="#">LIC0066</a>
	Middlesbrough Council	<a href="#">LIC0073</a>
	Mill Hill Park Residents' Association	<a href="#">LIC0080</a>
	James Mooney	<a href="#">LIC0008</a>
	Ian Mowbray	<a href="#">LIC0006</a>
**	Music Venue Trust (Mark Davyd: <a href="#">QQ 197-207</a> )	<a href="#">LIC0058</a>
**	Music Venue Trust, UK Live Music Group and Musicians' Union (Paul Latham, Mark Davyd and Alex Mann: <a href="#">QQ 197-207</a> )	<a href="#">LIC0174</a>
**	National Association of Licensing and Enforcement Officers (John Miley, National Chair, Marie-Claire Frankie, Licensing Solicitor: <a href="#">QQ 54-62</a> )	<a href="#">LIC0148</a> <a href="#">LIC0158</a>
	National Federation of Retail Newsagents	<a href="#">LIC0107</a>
**	National Organisation of Residents' Associations (Dr Alan Shrank, Chairman, Councillor Carol Davies: <a href="#">QQ 70-77</a> )	<a href="#">LIC0024</a> <a href="#">LIC0160</a>
**	National Police Chiefs' Council (Assistant Chief Constable Rachel Kearton: <a href="#">QQ 133-143</a> )	<a href="#">LIC0115</a> <a href="#">LIC0166</a>
**	Night Time Industries Association (Alan Miller: <a href="#">QQ 183-196</a> )	<a href="#">LIC0100</a>
*	Ocado (Mark Bentley, Customer Operations Director <a href="#">QQ 155-165</a> )	
**	Office of the Police and Crime Commissioner for Devon and Cornwall (Alison Hernandez, Police and Crime Commissioner for Devon and Cornwall: <a href="#">QQ 133-143</a> )	<a href="#">LIC0153</a>
	Paddington Waterways and Maida Vale Society	<a href="#">LIC0144</a>
	Pinsent Masons LLP	<a href="#">LIC0074</a>
	Plymouth City Council	<a href="#">LIC0048</a>
*	Police Superintendents Association of England and Wales (Chief Superintendent Gavin Thomas: <a href="#">QQ 133-143</a> )	
	Michael Pollard	<a href="#">LIC0002</a>
**	Poppleston Allen (Andrew Grimsey, Solicitor: <a href="#">QQ 113-123</a> )	<a href="#">LIC0105</a>
*	Public Health England (Rosanna O'Connor, Director, Alcohol, Drugs & Tobacco: <a href="#">QQ 1-15</a> )	
**	Punch Taverns (Stuart Gallyot, Company Secretary and Director of Legal & Estates: <a href="#">QQ 78-89</a> )	<a href="#">LIC0087</a>
*	District Judge Elizabeth Roscoe, Westminster Magistrates' Court ( <a href="#">QQ 124-132</a> )	

	Royal Borough of Greenwich	<a href="#">LIC0176</a>
*	Royal College of Emergency Medicine (Dr Adrian Boyle, Chair of the Quality Emergency Care Committee: <a href="#">QQ 102–112</a> )	
*	Royal College of Psychiatrists (Professor Colin Drummond, Chair of the Faculty of Addictions Psychiatry: <a href="#">QQ 102–112</a> )	
*	Rushcliffe Borough Council (Councillor Debbie Mason, Portfolio Holder for Safety and Well-being, David Banks, Executive Manager Neighbourhoods: <a href="#">QQ 16–30</a> )	
**	Sainsbury's Supermarkets Ltd (Nick Grant, Head of Legal Services: <a href="#">QQ 155–165</a> )	<a href="#">LIC0046</a> <a href="#">LIC0170</a>
	Sandwell Metropolitan Borough Council	<a href="#">LIC0026</a>
	John Saunders	<a href="#">LIC0067</a>
	Scarborough Borough Council	<a href="#">LIC0014</a>
	Scarborough Borough Council Licensing Committee	<a href="#">LIC0145</a>
	Scotch Whisky Association	<a href="#">LIC0092</a>
	Scottish Health Action on Alcohol Problems	<a href="#">LIC0032</a>
	Sedgemoor District Council	<a href="#">LIC0007</a>
	Sedgemoor District Council Licensing and General Purposes Committee	<a href="#">LIC0076</a>
	Sefton Metropolitan Borough Council	<a href="#">LIC0084</a>
	Stuart Seydel	<a href="#">LIC0005</a>
	Caroline Sharkey	<a href="#">LIC0119</a>
	Abigail Shepherd	<a href="#">LIC0070</a>
	James Sloan	<a href="#">LIC0020</a>
**	Society of Independent Brewers (Robert Humphreys, Non-Executive Director: <a href="#">QQ 78–89</a> )	<a href="#">LIC0093</a>
	Soho Society	<a href="#">LIC0050</a>
	South Derbyshire District Council	<a href="#">LIC0151</a>
	South Holland District Council	<a href="#">LIC0116</a>
	South Somerset District Council	<a href="#">LIC0019</a>
	South Tyneside Council	<a href="#">LIC0027</a>
	South Wales Police	<a href="#">LIC0072</a>
	St Austell Town Council	<a href="#">LIC0051</a>
	St Edmundsbury Borough and Forest Heath District Councils	<a href="#">LIC0060</a>
	St Peter's Residents' Association	<a href="#">LIC0104</a>
	Staffordshire Police	<a href="#">LIC0037</a>

	Councillor Clive Stevens	<a href="#">LIC0077</a>
*	Stratford-on-Avon District Council (Councillor Peter Richards, Chairman of the Licensing and Regulatory Committee: <a href="#">QQ 16–30</a> )	
	Suffolk Coastal District Council and Waveney District Council	<a href="#">LIC0029</a>
	Sunderland Health and Wellbeing Board	<a href="#">LIC0110</a>
	Sussex Police	<a href="#">LIC0042</a>
**	Sustainable Acoustics (Peter Rogers, Managing Director: <a href="#">QQ 173–182</a> )	<a href="#">LIC0172</a>
	Telford and Wrekin Council	<a href="#">LIC0057</a>
	Thomas and Thomas Partners	<a href="#">LIC0131</a>
	TLT Solicitors	<a href="#">LIC0112</a>
	UK Health Forum	<a href="#">LIC0035</a>
	UK Music	<a href="#">LIC0096</a>
	University of Westminster	<a href="#">LIC0137</a>
*	Waitrose (James Brodhurst-Brown, Manager, Regulatory Affairs and Trading Law: <a href="#">QQ 155–165</a> )	
	Watford Borough Council	<a href="#">LIC0106</a>
	Waverley Borough Council	<a href="#">LIC0117</a>
	Welsh Government	<a href="#">LIC0102</a>
	West Midlands Neighbouring Authority Working Group (Licensing)	<a href="#">LIC0052</a>
*	Westminster Citizens Advice (Richard Brown, Licensing Solicitor: <a href="#">QQ 70–77</a> )	
	Westminster City Council	<a href="#">LIC0090</a>
**	Wine and Spirit Trade Association (Miles Beale, Chief Executive: <a href="#">QQ 63–69</a> )	<a href="#">LIC0130</a>
	Wirral Council	<a href="#">LIC0053</a>
	Emily Wolfe and Simon Margetts	<a href="#">LIC0018</a>
	Emily Wolfe	<a href="#">LIC0030</a>
	James Wood	<a href="#">LIC0010</a>
	Worcestershire County Council	<a href="#">LIC0040</a>
**	Working Men’s Club and Institute Union Limited (George Dawson, Union President: <a href="#">QQ 166–172</a> )	<a href="#">LIC0088</a>

## APPENDIX 3: CALL FOR EVIDENCE

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The Select Committee on the Licensing Act 2003 was set up on 25 May 2016 with the task of conducting post-legislative scrutiny of that 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.

This is a public call for written evidence to be submitted to the Committee. The deadline is 2 September 2016.

It is helpful if opinions are supported by factual and statistical evidence where appropriate.

The Committee would welcome evidence from anyone with an interest in the operation of the Licensing Act 2003. Information on how to submit evidence is set out below. If you have any questions or require adjustments to enable you to respond please contact the Committee team: details also below.

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. It would in particular welcome views on the following issues. You need not address all these questions.

### 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?
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?

### 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?

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?

### 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?
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?

### 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?
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?

### 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?
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?

### 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?

### 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?<sup>601</sup>

### **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?

### **International comparisons**

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

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<sup>601</sup> The sub judice rule, referred to on the following page, means that witnesses should not comment on the latest stages of *Scotch Whisky Association and others v The Lord Advocate and the Advocate General for Scotland*, currently before the Inner House of the Court of Session. Comment on earlier stages of the proceedings, up to and including the judgment of the Court of Justice of the European Union, is permissible.

## APPENDIX 4: NOTE OF VISIT TO SOUTHWARK COUNCIL LICENSING COMMITTEE

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### Overview of the Visit

The Committee visited the offices of Southwark Council on 15 September 2016 to see a session of the Council's Licensing Sub-Committee.

During the visit the Committee observed two cases being heard by the Sub-Committee, and afterwards met privately with Councillor Renata Hamvas, the Chair of the Licensing Committee, and licensing officers, to discuss the licensing process as operated by Southwark Borough Council, and to hear about particular issues and concerns held by their councillors and officers.

### First Session

The Committee first attended a session on the case of a Mediterranean Deli, located on a small one-way road in Bermondsey, which had applied for a licence to serve alcohol both on and off its premises.

The original application had requested permission to supply alcohol for consumption on and off the premises, to host indoor sporting events, live and recorded music, and non-standard opening times for festivities and public holidays. It was however announced at the hearing that, after objections from local responsible authorities, an agreement had been reached with the applicant that there would be no live music indoors or outdoors, recorded music only indoors, and that alcohol would stop being served 20 minutes before the agreed closing time of the premises. Furthermore, all conditions set by the police had been agreed upon. These included the installation and maintenance of a CCTV system, and limiting use of the outside area of the premises to a maximum of five smokers only, with no outside drinking permitted.

The Licensing Sub-Committee then witnessed a short presentation from the applicant, outlining his food-orientated business model and the measures he had taken, such as paying for private refuse collection, which he felt mitigated any negative impact his business might have on the local area. He emphasised that his application for live music, now withdrawn, had resulted from a misunderstanding that this was required to play pre-recorded background music. He further emphasised that his business operated throughout the day on a Southern European café model, and he had no intention of it becoming a late night drinking venue. However, he also noted that he had frequently used Temporary Event Notices within the previous year to test out the feasibility of a full premises licence, and these had been a success.

After the applicant's presentation, councillors questioned him about how he intended to mitigate nuisance behaviours such as smoking or drunken customers. The applicant noted his installation of ash trays on the street outside his premises, and the business's focus on serving food alongside alcohol. When asked to explain the value his business brought to the local area, he argued that it brought tourists to the area and also employed local residents.

Both the police and the Council's environmental officer briefly noted that they had withdrawn their objections. However, a small group of local residents were also in attendance, and made clear they were extremely angry about the licensing of bars along the street in question, opposite where they lived. They explained that, over the previous twenty years, they had seen the area change dramatically as a result

of more permissive licensing. They stated that public urination and defecation, lewd public sexual acts and general rowdy behaviour had become commonplace on their street, likening the experience to having been transported to “the middle of Millwall with a bunch of drunken football yobs”. The transformation of their previously quiet street in this way was “destroying their lives” and preventing them from sleeping more than two or three nights a week. They claimed the police did not properly understand or enforce licensing laws, while the Council seemed uninterested in helping them.

However, on further questioning it emerged that these complaints were, with some minor exceptions, not directed at this particular business, but at the wider licensing of various premises along the street, most of which were focused on serving alcohol rather than food. This was illustrated by the playing of a short video recorded by one of the residents to members of the Licensing Sub-Committee, showing noisy crowds gathered on the street at 6pm on a Saturday evening, though not actually outside the premises in question.

The councillors on the Sub-Committee agreed they would visit the street in question to see if a ‘Saturation Zone’ (established under the Cumulative Impact Policy), limiting the granting of further licences in the area, might be an appropriate measure for addressing residents’ concerns.

## Second Session

After the Sub-Committee’s private deliberation the Committee attended a second session which had been called at short notice to discuss an objection to a TEN filed by the owners of a pub in Bermondsey. The premises user and his father were planning to host an event at nearby open-air premises which they owned, to coincide with the annual Bermondsey Festival. However, following a similar event the previous year, where concerns had been raised by environmental protection officers about the presence of flammable straw bales and a lack of noise controls, the Council was considering this year whether to issue a counter-notice, which would block the use of a TEN at the open-air premises.

The business owners made clear that they were confused by the process, and were uncertain as to whether they were appealing a decision that had already been taken by the Council. The father explained that he would have liked greater dialogue with the Council, as opposed to what he perceived to be a confrontational, court-like system.

A lengthy and at times highly charged discussion ensued, during which a map of the premises was distributed. The business owners pointed to the fact that there had been no complaints associated with the previous year’s event, and that a similar event hosted by other nearby premises did not seem to be facing these problems from the Council. They also noted that while their notice to supply alcohol lasted until 11.30pm, in reality the previous year almost all customers had left before 9pm. It was further established that no straw bales would be present at this year’s event, and that additional fire safety and security measures would be in place.

While councillors criticised the business owners for not doing more to coordinate with the Bermondsey Festival organisers, they appeared to be broadly satisfied with this explanation. The hearing was then adjourned.

### Breakout discussion

After witnessing the two hearings, the Committee met privately with Councillor Renata Hamvas, the Chair of the Licensing Committee, Jayne Tear, Southwark Council's Principal Licensing Officer, and Debra Allday, Senior Licensing Lawyer, together representing the views of the Council. They discussed some of the more general issues and concerns held by the Council in relation to the Licensing Act 2003.

The Chair began by providing a general overview of licensing at Southwark, noting that on average there were one or two meetings of the Licensing Sub-Committee per week, with between one and three items per meeting. There had been a dramatic increase in licensing applications over the past few years, but no more money was available for more licensing officers—a problem common to many inner London boroughs. She drew particular attention to their use of Saturation Zones as a means of controlling the number of new applications, and the impact these were having on particular areas of Southwark.

### *Conciliation*

The Principal Licensing Officer emphasised that Southwark sought to conciliate as many cases as possible before they reached the need for a hearing. She pointed out that the Licensing Act currently required that any hearing should take place within 20 days of an initial licensing application, which in practice only gave them around five days to attempt to conciliate all parties. She suggested that if hearings could be heard within 30 days, they could increase the conciliation period to 10–14 days, and potentially cut down on the number of hearings required.

When asked about the practicalities of conciliation, Ms Tear explained that the process normally began with a case officer compiling the relevant evidence. An informal meeting was then arranged, in which no resolutions were required. If this resulted in objections being withdrawn, the application could then proceed without the need for a hearing. Efforts were made to ensure that a meeting of all responsible authorities was held every three weeks, to ensure that there were no contradictions between their respective positions.

The licensing team also noted that when summary reviews were called for, police only had 48 hours at present to examine an application—a problem, especially when this fell over a weekend. They would accordingly like this extended to 72 hours. They wished to emphasise the cross-agency work and communication that went into this process, which they believed saved a considerable amount of time.

### *Reviews and Appeals*

The Chair noted that sometimes the team observed businesses attempting to circumvent review procedures by transferring premises licences to relatives or associates, prior to a review hearing. In some cases they had seen husbands transferring licences to their wives and business owners transferring licences to their employees, sometimes even on the morning of the hearing itself. They suggested that, once a review had been called, Licensing Committees should be able to block any transfer of a premises licence to other individuals.

The Chair also highlighted problems with the appeals process. Up to eighteen months could elapse between an initial hearing and an appeal being heard against a licensing decision, during which time some businesses were using cheap, short-term fixes to avoid decisions being taken against them by the Council. The team recommended reducing this to a shorter, fixed time period between initial



hearings and appeals being heard. Over the past five years they had experienced a dramatic 200% increase in appeals, and so far that year had had to deal with eight appeals—a very high number.

### *Central Licensing Database*

Councillor Hamvas mentioned a significant problem with keeping track of personal licences, and an inability to find out easily if a local licence holder had previously caused problems, or even committed criminal offences, in other parts of the country. This extended to magistrates, who did not have a convenient way of ascertaining whether individuals they were convicting might hold a personal licence which might need to be revoked.

### *Planning and licensing*

The Chair stressed that the Council did try to coordinate licensing and planning efforts, but noted that the licensing and planning regimes were not formally joined up, and unless very specific criteria were met, planning officers were prevented from making representations against licensing applications. The licensing team gave the example of local premises which had been granted planning approval as a pool club. With time, the owners had begun to transform the venue into a night club which operated only on particular days, which attracted all the problems typically associated with night clubs. However, as the venue still also operated as a pool club, it was not infringing its original planning conditions, and planning officers were therefore prevented from intervening.

The licensing team further noted that there was a discrepancy between planning law, which required the Council to write to local residents notifying them of applications, and licensing law, which did not. They pointed out that at present they did integrate licensing and planning regimes to a certain extent, for example by offering longer hours to premises which already had planning permission to operate as a night club. Within their licensing policy, Southwark characterised different parts of the borough in different ways, and attempted to apply similar licensing conditions to similar areas of the borough based on these classifications.

### *Churches*

The Chair also mentioned the rise in ‘problem churches’ in Southwark. Churches were largely exempt from regulation under the Licensing Act 2003, and some ‘alternative churches’ in the area had been exploiting this, setting up in a range of unsuitable accommodation and playing live music late into the night.<sup>602</sup> They could deal more easily with this problem if churches were required to have regulated hours.

### *Cost*

When asked about the differences between the costs of dealing with licensing applications and the amount they were permitted to charge for these services, the licensing team argued that the power to set licensing application fees should be devolved to local councils. There was at present a substantial discrepancy between the fees individuals and businesses paid for licensing applications and the much higher cost of administering these applications for councils, which they believed could best be addressed through locally-set fees.

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602 The Licensing Act 2003, paragraph 9 of schedule 1 grants exemptions from regulated entertainment for religious services and places of worship. However, no such exemptions exist for the sale of alcohol.

### *Temporary Event Notices (TENs)*

The Committee asked Councillor Hamvas about the balance between applications for TENs from individuals and small community organisations on the one hand, and already licensed commercial premises on the other. The Committee was told that a substantial majority came from the latter group, who often used TENs to test new licensing arrangements before they applied for a permanent alteration to their licensing conditions.

The licensing team suggested that there should be two kinds of TEN—one for genuine community events hosted by non-licence holders, and another for commercial operators looking to extend their pre-existing licensing arrangements for particular occasions or to trial new operating hours or business models. The cost of the latter could then be increased above £21 to reflect the real cost of administering them, without deterring genuine community events being hosted by non-licence holders.

The licensing team further requested the ability to apply formal conditions to TENs. At present, they were limited to approving or rejecting (through the use of a counter-notice) a TEN, or, in the case of a venue where a premises licence or club premises certificate already applied, transferring those conditions across to the TEN. In practice, the Council and police might often informally agree conditions with TEN premises users, in exchange for not blocking them. They suggested that the Licensing Act 2003 should be amended to allow licensing committees to apply both new and pre-existing conditions to all TENs.

### *Minimum Unit Pricing*

The Chair wanted to make clear she did not support any introduction of Minimum Unit Pricing (MUP), and instead favoured more targeted approaches to problem drinking behaviour which did not penalise responsible drinkers. Examples were their efforts to limit the sale of super-strength beer from local off-licences to 6% ABV or under, alongside measures such as limits on alcohol advertising in shop windows.

### **Decisions**

After the visit, the Committee was informed that the Licensing Sub-Committee had decided to grant the Mediterranean-style restaurant a premises licence, subject to the agreed conditions. They also decided not to issue a counter notice against the TEN at the open-air premises in Bermondsey, allowing the event to proceed as planned.

## APPENDIX 5: ACRONYMS

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ABV	Alcohol by volume
ACRE	Action with Communities in Rural England
ACS	Association of Convenience Stores
AFS	Alcohol Focus Scotland
AHA	Alcohol Health Alliance UK
ALMR	Association of Licensed Multiple Retailers
AOA	Airport Operators Association
APPG	All-Party Parliamentary Group
ASB	Anti-Social Behaviour
BATA	British Air Transport Association
BBCS	Ban on Below Cost Sales
BBfA	Better Business for All
BBPA	British Beer and Pub Association
BEIS	Department for Business, Energy and Industrial Strategy
BHA	British Hospitality Association
BID	Business Improvement District
BIL	Business in Licensing
BMA	British Medical Association
BRDO	Better Regulation Delivery Office
CAMRA	Campaign for Real Ale
CAN	Community Ancillary Sellers Notice
CAP	Community Alcohol Partnership
CCG	Clinical Commissioning Group
CGCA	Covent Garden Community Association
CIP	Cumulative Impact Policy
CIPFA	Chartered Institute of Public Finance and Accountancy
CIZ	Cumulative Impact Zone
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority
CMH	Case Management Hearing
CSE	Child Sexual Exploitation
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DoH	Department of Health
DPH	Director of Public Health

DPM	Designated Premises Supervisor
DPS	Designated Premises Manager
EA	Equality Act 2010
EHO	Environmental Health Officer
EMRO	Early Morning Restriction Order
ENTE	Evening and Night Time Economy
FPN	Fixed Penalty Notice
FWD	Federation of Wholesale Distributors
GDS	Government Digital Service
GLA	Greater London Authority
GMCA	Greater Manchester Combined Authority
GMV	Grassroots Music Venue
GRIP	Group Review Intervention Power
GVA	Gross value added
HALO	Health as a Licensing Objective
HMIC	Her Majesty's Inspectorate of Constabulary
HMRC	Her Majesty's Revenue and Customs
HSCIC	Health and Social Care Information Centre
ICESCR	International Covenant on Economic, Social and Cultural Rights
IoL	Institute of Licensing
LA	Licensing Act 2003
LAAA	Local Alcohol Action Area
LAG	Licensing Action Group
LGA	Local Government Association
LHB	Local Health Board
LMA	Live Music Act 2012
LNL	Late Night Levy
LSO	Licensing Standards Officer
LSOA	Lower Layer Super Output Areas
MCPS	Modern Crime Prevention Strategy
MESAS	Monitoring and Evaluating Scotland's Alcohol Strategy
MUP	Minimum Unit Pricing
MVT	Music Venue Trust
NALEO	National Association of Licensing and Enforcement Officers
NFRN	National Federation of Retail Newsagents

NICE	National Institute for Health and Care Excellence
NMRO	National Measurement and Regulation Office
NNDR	National Non-Domestic Rateable value
NORA	National Organisation of Residents' Associations
NPPC	National Police Chiefs' Council
NPPH	National Planning Policy Framework
NTE	Night Time Economy
NTIA	Night Time Industries Association
OECD	Organisation for Economic Co-operation and Development
ONS	Office for National Statistics
PACE	Police and Criminal Evidence Act
PASS	Proof of Age Standards Scheme
PCC	Police and Crime Commissioner
PCSO	Police Community Support Officer
PCT	Primary Care Trust
PEL	Public Entertainment Licensing
PHE	Public Health England
RA	Responsible Authority
RASG	Retail of Alcohol Standards Group
RCC	Rural Community Council
RDSG	Responsible Drinking Steering Group
SCSR	Scottish Centre for Social Research
SDA	Southwark Disablement Association
SEV	Sexual entertainment venues
SHAAP	Scottish Health Action on Alcohol Problems
SIA	Security Industry Authority
SLP	Statement of Licensing Policy
SLTA	Scottish Licensed Trade Association
SPA	Special Policy Area
SWA	Scotch Whisky Association
TEN	Temporary Event Notice
UKHF	UK Health Forum
WHO	World Health Organisation
WSTA	Wine and Spirit Trade Association