



House of Commons

ODPM: Housing, Planning,
Local Government and the
Regions Committee

**Government Response
to the Committee's
Sixth Report on the
Licensing Bill (Lords)
and the Evening
Economy**

**First Special Report of
Session 2002–03**

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ODPM: Housing, Planning, Local Government and the Regions Committee

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The current staff of the Committee are Kate Emms (Clerk), Libby Preston (Second Clerk), Claire O'Shaughnessy (Committee Specialist), Ben Kochan (Committee Specialist), Ian Hook (Committee Assistant) and Emma Carey (Secretary).

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First Special Report

The ODPM: Housing, Planning, Local Government and the Regions Committee reported to the House on the Licensing Bill (Lords) and the Evening Economy in its Sixth Report of Session 2002-03, published on 20 March 2003 as HC 541. The Government Response to that Report was received on 22 May 2003 in the form of a memorandum to the Committee. It is reproduced as an Appendix to this Special Report.

Appendix

1. This response was prepared and sent to the House of Commons ODPM: Housing, Planning, Local Government and the Regions Committee in May 2003 with respect to an interim report which deals with two issues relating to the Evening Economy which arise from the Licensing Bill (Lords) currently before Parliament. For ease of reference, where mention is made of a clause in the Bill, this is the clause as numbered when the Bill was brought to the House of Commons from the House of Lords on 12 March 2003.
2. Clause 179 of the Bill provides that the Secretary of State must issue guidance to licensing authorities on the discharge of their functions. An early draft of this guidance was prepared in February 2003 to enable and enhance parliamentary scrutiny and debate in connection with the passage of the Bill. This draft will change, to reflect both responses to ongoing consultation and changes made to the Bill during its passage through Parliament. Ministers have, for example, said that the final statutory guidance will deal explicitly with the issue of a saturation of, and cumulative effect of, licensed premises of a certain type on the licensing objectives.

Residents' Objections and "The Burden of Proof"

We recommend that licensing authorities are given powers to accept residents' sworn evidence of nuisance, and we further recommend that (as in certain European cities) licensing authorities are given powers to set an overall terminal hour in particular defined local areas as part of licensing policy.

3. Residents' rights are at the heart of the new licensing system. Before determining its licensing policy for any three-year period, the licensing authority ('authority') must consult those listed in clause 6(3) of the Bill. These include bodies representing residents in its area. It is for each authority to determine whether any particular body, or bodies, does represent residents in its area when the licensing body is determined.
4. We foresee that all statements of policy will begin by stating the four licensing objectives, which the licensing authority must have a view to promoting in carrying out its licensing functions. The objectives are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

Each objective has equal importance.

5. The final guidance will be explicit in stating that an authority can take the cumulative effect of problems of crime, disorder and public nuisance into account where they exist, and impact on the promotion of the licensing objectives. In determining whether they exist, the police and the local authority, working as necessary with other stakeholders, including local residents, will need to provide statistical evidence to make a formal assessment of the cumulative effect problems of crime, disorder and public nuisance and the boundary of the area in which they occur. This assessment will need to be seen by residents and industry alike as having been conducted in good faith and to be addressing genuine and specific problems of crime and disorder, public nuisance, as well as safeguarding public safety and protecting children from harm.

6. Once a formal assessment has been done, the licensing policy can be drawn up, or subsequently be revised, to include a justified evidential statement for a presumption against granting further licenses of a particular type. However each application would still need to be considered on its individual merits and not rejected out of hand.

7. In considering individual applications for new premises licenses (and major variations of existing premises licenses) and club premises certificates (and variations) under its policy, the authority must consider representations from “responsible authorities” (including the police and the local planning authority) and also from residents. If relevant representations are made, then a hearing will be required at which the representations of the relevant parties will be considered (if all parties agree a hearing may be dispensed with). It is then for the authority to grant the application either in the terms sought with conditions attached to the license or certificate which are consistent with the operating schedule, or subject to modifications to those conditions which would be attached to the licence or certificate. Alternatively, the authority may refuse the application on the grounds that refusal is necessary for the promotion of the licensing objectives. There is also an entitlement to appeal to the magistrates’ court for parties aggrieved by decisions of the authority. In addition, at any stage following the grant of a premises licence or club premises certificate, residents may ask the authority to review the licence because of problems at, or in the vicinity of, the premises on a ground relevant to one or more of the licensing objectives.

8. The Bill seeks to reform our arcane licensing laws. It strikes a balance between the need to protect residents and the desirability of creating new jobs and improving our

leisure culture. The Government considers that a statement of licensing policy and the application procedure will enable an authority to discharge its functions with a view to promoting the licensing objectives effectively in the overall public interest – weighing the interests of both businesses and residents. However, the Government believes that hearing sworn evidence from residents, or any other party, at a regulatory hearing would lead to an overly adversarial contest. This would not be helpful to the authority in reaching decisions in the wider interests of the community, or in reviewing problems when they arise.

9. Where an authority is unable to establish that, in a given area, there is any objectively measurable cumulative effect or impact on the promotion of the licensing objectives, then the Government believes it would be wrong to regulate as though there was. Even where problems do exist, the Government remains strongly of the view that setting a terminal hour for a locality is not likely to be an effective solution and would undermine a key principle on which the Bill is based. Fixed and artificial closing times produce peaks of disorder on the street when a majority of customers emerge from licensed premises simultaneously. Such zoning in terms of closing times would encourage drinkers to migrate from one area to another, with greater risks of, for example, drink-driving and street disorder. Once fixed permitted hours are abolished, there will then be less reason for drinkers to migrate to a particular quarter of a city centre to enjoy an extension of hours.

Upper Capacity Limits

We recommend that all local authorities are required within their licensing strategies to define upper capacity limits in terms of the number of people with which particular areas, identified by their economic role within the district can reasonably cope at given times of day. Overall capacity could be identified in relation to the fire regulation standards for individual premises, which may also give one potential means of enforcement.

10. The highest densities of pubs, bars and restaurants per head of population are to be found in urban and rural areas where tourism is a main or important industry. The centre of Bath is one such place with a concentration of licensed premises. However, because of the attractiveness of Bath as a tourist destination, it can be very difficult to get a table in a Bath pub or restaurant at the weekend. Consumer demand cannot so simply be constrained by the setting of a customer capacity limit for an area in a licensing policy, even if this were desirable. The Government considers that giving an authority the power to review licenses solely on the grounds of a high concentration of consumers in an area would be unreasonable. Indeed such a policy would be likely to be challenged in courts unless a justifiable methodology was used to assess upper capacity limits and a direct causal connection substantiated between capacity and crime and disorder.

11. However it is essential to promote public safety in terms of an intensity of people present in a licensed premises. Under the Bill, licensing authorities will be able to attach capacity limits as conditions to licences where expert opinion, through representations, believes that the absence of such a limit is likely to affect the promotion of the licensing objectives and the authority considers it necessary to attract such a condition.

12. The Government considers that the evening and late-night economy presents a range of management and strategic issues. These need to be addressed through a holistic approach that includes licensing, planning, policing, industry initiatives, town centre management and public transport provision. For instance, under their planning powers, local authorities can do what is best for their community in terms of managing the potential for conflict between leisure and residential uses when there is an application for development or change of use. Planning policy advises local planning authorities to develop distinct quarters in larger city centres for leisure and entertainment uses. However, few local authorities have developed a formal strategy, or planning policies for the evening economy in their local development plans.

13. The Office of the Deputy Prime Minister's 3rd March interim announcement on the A3 Use Class will, in due course, create a separate Use Class for pubs and bars. The effect of this will be to require any proposal to change the use of an existing building into a pub or bar to apply for planning permission. Any cumulative effect problems could then be considered as part of the planning decision.

List of Committee Reports in the Current Parliament

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First Report	Local Government Finance: Formula Grant Distribution Government Response	(HC 164) (Cm 5753)
Second Report	Annual Report to the Liaison Committee	(HC 288)
Third Report	Affordable Housing Government Response	(HC 77) (Cm 5783)
Fourth Report	Planning, Competitiveness and Productivity Government Response	(HC 114) (Cm 5809)
Fifth Report	Departmental Annual Report and Estimates 2002 Government Response	(HC 78) (Cm 5841)
Sixth Report	The Evening Economy and the Urban Renaissance: Interim Report [Responding to issues in the Licensing Bill] Government Response: First Special Report	(HC 396) (HC 750)
Seventh Report	The Effectiveness of Government Regeneration Initiatives	(HC 76)
Eighth Report	Planning for Sustainable Communities: Sustainable Communities in the South East	(HC 77)