



HOUSE OF LORDS

Select Committee on the
London Local Authorities Bill [HL]

Special Report

Ordered to be printed 18 July 2008 and published 22 July 2008

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 160

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The Select Committee was appointed by the House of Lords on 30 June 2008.

The Members of the Committee were:

Lord Acton
Lord Bew
Lord Brougham and Vaux
Lord Burnett
Lord Geddes (Chairman)

General Information

The transcripts of evidence taken before the Committee are available on the internet at:
<http://services.parliament.uk/bills/2007-08/londonlocalauthorities/Committees/hlobclondonlocalauthoritiesbill.html>

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LONDON LOCAL AUTHORITIES BILL [HL]

1. The London Local Authorities Bill was introduced into the House of Lords on 22 January 2008 and given a Second Reading on 20 February 2008. It is promoted by Westminster City Council on behalf of all 33 London Boroughs, including the Corporation of the City of London. When the Bill was introduced, however, only 32 of the Borough Councils had passed the necessary resolution. In order to ensure that the Bill covered the whole of London, the promoters deposited a ‘petition for additional provision’ on 7 May 2008 to extend the provisions of the Bill to the area of Hounslow Borough Council. No petitions were presented against the additional provision.
2. The Bill covers a wide range of issues relating to London. The provisions of the Bill are described in the explanatory memorandum which is attached to the Bill.¹ Those directly or especially affected by the Bill had an opportunity to voice their objections by presenting a petition against the Bill. Four such petitions were received, one of which was withdrawn before the Committee had considered the Clauses to which it related.²
3. The House also received four reports from Government Departments, two of which related to Clauses in the Bill which were considered by the Committee.²
4. The Select Committee on the Bill was appointed on 30 June to consider the matters complained of in the petitions. The members of the Committee were: Lord Acton, Lord Bew, Lord Brougham and Vaux, Lord Burnett, and Lord Geddes (Chairman).
5. The Committee first met on 7 July and sat for three days to hear evidence and submissions from the promoters, the petitioners and Government Departments. Interests declared by Members of the Committee in relation to the Bill are set out in paragraphs 4-6 of the transcript.
6. The Clauses considered by the Committee, together with the petitioners who appeared on each Clause, and a list of the applicable Government Departmental reports, are set out in Appendix 1. In the discussion of each provision below, “petitioners” refers to those who appeared in respect of each Clause as set out in that Appendix. Only an outline of some of the principal arguments in respect of each provision is given in this report; the full transcript of proceedings before the Committee is available on the internet.³

Clause 10: ‘Scores on doors’

7. Clause 10 would make mandatory and give statutory force to a scheme which has been operating voluntarily in London since October 2007. ‘Scores on

¹ Available from the Parliamentary Agents for the Bill, Sharpe Pritchard, Elizabeth House, Fulwood Place, London, WC1V 6HG or on the internet at:

<http://www.publications.parliament.uk/pa/ld200708/ldprbill/018/018.pdf>

² The petitions and reports against the Bill are available on the internet at

<http://services.parliament.uk/bills/2007-08/londonlocalauthorities.html>

³ The transcript of all of the Committee’s proceedings are available on the internet at:

<http://services.parliament.uk/bills/2007-08/londonlocalauthorities/Committees/hlobclondonlocalauthoritiesbill.html>

doors' are certificates and stickers which are issued by local authorities through their environmental health officers to all premises which sell food to customers, showing how well those premises have done in their food hygiene inspections. The scheme covers not just restaurants but also takeaways, pubs, and any shops or other premises where food is sold. The full transcript of the proceedings before the Committee on this Clause is given in paragraphs 22-712.

8. The promoters of the Bill argued that the voluntary London scores on doors scheme had led to a material rise in hygiene standards in London food establishments. They contended, however, that a mandatory scheme on a statutory footing was needed in order to improve overall standards and, in particular, to improve the standards of the worst-performing establishments.
9. The petitioners argued that a mandatory scheme would place a burden on food businesses. They presented evidence that Clause 10 would undermine the efforts of the Food Standard Agency to reduce burdens on business as part of its Simplification Plan and pre-empt the outcome of its consultation on a voluntary national scores on doors scheme. They also questioned the rating system being used in London for scores on doors and argued that the more different schemes there were in the country, the more confusing it was for consumers.

The Committee's opinion and conclusion on Clause 10

10. The Committee was content for the Bill to make provision for a mandatory scheme for the display of food hygiene documents in London.
11. The Committee welcomed the promoters' proposal that a new Clause 10A be inserted in the Bill. This new Clause would have the effect that Clause 10 would only apply to, and so make mandatory, the scores on doors scheme approved by a majority of the London local authorities. It would therefore not be possible to have two London authorities having different mandatory schemes.
12. The Committee also welcomed the promoters' undertaking (given in paragraph 533) that they would not bring a mandatory scheme into effect before the Food Standard Agency had concluded its consultation on a nationwide scores on doors scheme and published its consequent report. If there is no national scheme in operation by the end of two years from publication of that report, the promoters should be allowed to bring Clause 10 into force.⁴
13. However, the majority of the Committee wanted the promoters to go further.⁵ The majority opinion of the Committee was that the mandatory scores on doors scheme in London should not be different from the scheme recommended by the Food Standards Agency.
14. Therefore, the Committee required the inclusion of a new provision in the Bill providing that the documentation required by any mandatory scheme in London would be consistent with the nationwide scores on doors scheme recommended by the Food Standards Agency.

⁴ See paragraphs 716-722 of the transcript

⁵ For details of the division see Appendix 3

15. **The Committee concluded that Clause 10, with the amendments suggested by the promoters, and new Clause 10A should proceed, with the following amendments to Clause 10A.**
 16. **In subsection (1) in new Clause 10A, delete from “committee” in line 2 to the end.**
 17. **After subsection (4) in new Clause 10A, insert:**
 - “(5) The powers conferred by subsections (1) and (2)(b) must be exercised so as to secure that the form of the food hygiene documents at any time complies with the provisions of the current national scheme, if there is one.**
 - (6) In this section “joint committee” means a committee established under section 101(5) of the Local Government Act 1972 (c. 70) and comprising at least one member from each borough council.**
 - (7) In this section “national scheme” means a scheme (by whatever name called) which is established by the Food Standards Agency and which, though it may not be legally binding, is intended:**
 - (a) to encourage giving consumers information about food hygiene standards at establishments, in particular by means of a scoring or rating system (with or without symbols to designate the score or rating); and**
 - (b) to apply throughout England (whether or not it is intended also to apply in other parts of the United Kingdom),****and the reference in subsection (5) to the current national scheme in relation to any time is to the national scheme in the form in which it applies at that time.”**
18. **The full, amended Clause 10A can be found in Appendix 2.**

Clause 9: Tables and chairs on the highway

19. **Under section 115E of the Highway Act 1980, a local authority can grant permission for the placing of items on the highway, including tables and chairs. Section 115F of that Act gives local authorities the power to place conditions on such permissions, including the power to make a charge, but the charge may only relate to the reasonable administrative costs of granting the permission. Clause 9 of the Bill would allow the charge for a permission also to cover the costs of enforcing the permission (i.e. the cost of ensuring the permission is being abided by and not the costs of prosecuting for breach of permission) and the additional costs of street cleaning associated with the fact that there are tables and chairs or other items on the pavement or other parts of the highway. The full transcript of the proceedings before the Committee on this Clause is given in paragraphs 727-969.**
20. **The promoters of the Bill argued that it was only fair that additional costs such as street cleaning that resulted from businesses placing tables and chairs on the highway should be borne by the businesses, who put the table and chairs there to generate income, and not come out of the general local**

authority budget and therefore ultimately be paid for by the council taxpayers of that borough. They presented evidence that there would be less cost and less administrative burden by making such charges under the Highways Act than under other legislation.

21. The petitioners argued that the charges proposed were unjustified and represented a 100% increase for businesses. Street cleaning was carried out by local councils, and businesses paid their rates for those cleaning services. Where there was a problem, councils had other remedies available to them. They considered that there had been inadequate consultation on the Bill.

The Committee's conclusion on Clause 9

22. **The Committee concluded that Clause 9 should proceed with the amendments suggested by the promoters.**

Part 4: Houses in multiple occupation

23. Section 234 of the Housing Act 2004 provides for the appropriate national authority to make provision by regulations for the purpose of ensuring that in respect of every house in multiple occupation (HMO) of a description specified in the regulations: (a) there are in place satisfactory management arrangements; and (b) satisfactory standards of management are observed.
24. Part 4 of the Bill would allow a local authority to take action in cases where the management of an HMO fell below the standards required by the management regulations. It would do so by providing for local authorities to serve a management notice setting out remedial action that should be taken to remedy a failure to comply with the regulations. The full transcript of the proceedings before the Committee on this Part is given in paragraphs 999-1274.
25. The promoters of the Bill argued that Part 4 would allow a local authority simply and easily to set out the relevant defects in an HMO and to ensure that managers were aware of them and then step in and do the work if appropriate. They contended that it was a straightforward scheme that was helpful to both sides, because it allowed the local housing authority to say in a straightforward way what the problems were, and it allowed them to tell the manager exactly what the timing was to do something about them.
26. The petitioners presented evidence that the Housing Act 2004 already provided local authorities with powers to require landlords to take remedial action, such as carrying out repairs, in cases where the management of an HMO fell below required standards.
27. The Committee had before it a Report from the Department of Communities and Local Government. The Report stated that Part 4 of the Bill was not required. Under Part 1 of the 2004 Act, a local authority could require hazards to be remedied by requiring a landlord or manager to carry out works under an Improvement Notice. The Report further stated that the Secretary of State would not support a legislative change that would result in the powers relating to the fitness of HMO stock differing between London and the rest of England. The Report recommended that the Part be deleted.

The Committee's opinion and conclusion on Part 4

28. The Committee considered that the London local authorities had demonstrated their need for Part 4. On the evidence put to the Committee, Part 4 would enable London local authorities to avoid an overly cumbersome mechanism for dealing with defects in HMOs. The Committee was unconvinced by the argument that a national scheme was needed and did not consider that it would cause undue difficulty to have one system in operation in London and another in the rest of England.
29. **The Committee concluded that Part 4 should proceed with the amendments suggested by the promoters.**

Clause 23: Entertainment involving nudity

30. Clause 23 would enable a local authority to impose a standard condition banning nudity or partial nudity on all premises licensed to provide regulated entertainment. The full transcript of the proceedings before the Committee on this Clause is given in paragraphs 1291-1522.
31. The promoters of the Bill presented evidence that currently premises which could provide music and dance under their licence were also able to provide adult entertainment involving nudity, even though they did not have the appropriate controlling conditions. Those licensing problems, which had been encountered in local authorities such as Tower Hamlets, were unlikely to be satisfactorily resolved by a review under the Licensing Act 2003, because such reviews could only be triggered by certain designated people; they could not be triggered by a local authority.
32. The petitioners argued that Clause 23 was unnecessary, as the Licensing Act 2003 gave licensing authorities the ability to review existing licenses should the operation of an outlet give rise to specific concerns. Moreover, the powers to be granted by the Clause ran counter to the legislative intent behind the 2003 Act.
33. The Committee had before it a Report from the Home Office. The Report recognised that local authorities had concerns over the regulation of lap dancing clubs and similar establishments, but it stated that the Clause did little to change the current powers available to the licensing authorities. The Government was keen for any changes to the licensing regime to apply consistently to England and Wales, rather than in London only. They were consulting with local authorities in order to establish the best way to address concerns over the licensing regime. The Report asked for the Clause to be deleted.

The Committee's opinion and conclusion on Clause 23

34. The Committee considered that the promoters had demonstrated that Clause 23 was necessary in order to deal with a specific licensing problem. The Committee was unconvinced by the Government's arguments against the Clause. The Clause would resolve a much smaller problem than the issues of principle covered by the Government's consultation.
35. The promoters have given an undertaking in the following terms:

“In the event that government legislation comes into force which has the effect of rendering Clause 23 of the Bill (if enacted) nugatory, and the government legislation failing to repeal Clause 23, then London

Councils hereby undertake that in the next London Local Authorities Bill to be promoted following the coming into effect of the government legislation, a clause will be inserted which would have the effect of repealing Clause 23 (if enacted).”

36. **The Committee concluded that Clause 23 should proceed with the amendments suggested by the promoters and with the undertaking that the promoters have given.**

APPENDIX 1: CLAUSES CONSIDERED BY THE COMMITTEE

The table below shows the Clauses which were considered by the Committee, together with the petitioners who appeared on each Clause, and the applicable Government Departmental Reports.

Clauses	Petitioners appearing against	Departmental Reports
Scores on doors		
Clause 10 Display of food hygiene documents	The British Beer & Pub Assn (Petition no. 1) The British Hospitality Assn (Petition no. 2) The Assn of Licensed Multiple Retailers (Petition no. 4)	
Chairs & tables on the highway		
Clause 9 Charges for permitting the use of objects, etc. on the highway	The British Beer & Pub Assn (Petition no. 1) The British Hospitality Assn (Petition no. 2) The Assn of Licensed Multiple Retailers (Petition no. 4)	
Houses in multiple occupation (HMOs)		
Part 4 Houses in Multiple Occupation: Management Notices (Clauses 11-20, Schedule 2 & 3)	The British Beer & Pub Assn (Petition no. 1) The Assn of Licensed Multiple Retailers (Petition no. 4)	The Department for Communities and Local Government
Entertainment involving nudity		
Clause 23 Licensing Act 2003 applications: regulated entertainment involving nudity, etc.	The Assn of Licensed Multiple Retailers (Petition no. 4)	The Home Office

APPENDIX 2: AMENDMENTS RELATING TO THE DISPLAY OF FOOD HYGIENE DOCUMENTS

Clause 10

Page 8, line 40, leave out “the council shall determine” and insert “shall be prescribed in accordance with section 10A (form of food hygiene documentation).”

Clause 10A

After Clause 10 insert the following new Clause—

“10A Form of food hygiene documentation

- (1) The form of the food hygiene documents for the purposes of section 10 (display of food hygiene documents) shall be prescribed by a joint committee.
- (2) The form of the food hygiene documents so prescribed—
 - (a) shall be in substantially the same form for each borough council; and
 - (b) may be varied by a joint committee.
- (3) When a joint committee prescribes the form of the food hygiene documents under subsection (1) or varies the form of a food hygiene document under subsection (2), it shall publish notice of that fact in the London Gazette.
- (4) No council shall appoint a day under section 3 (appointed day) in respect of the said section 10 until a joint committee has prescribed the form of the food hygiene documents for the first time and given notice of that fact in accordance with subsection (3).
- (5) The powers conferred by subsections (1) and (2)(b) must be exercised so as to secure that the form of the food hygiene documents at any time complies with the provisions of the current national scheme, if there is one.
- (6) In this section “joint committee” means a committee established under section 101(5) of the Local Government Act 1972 (c. 70) and comprising at least one member from each borough council.
- (7) In this section “national scheme” means a scheme (by whatever name called) which is established by the Food Standards Agency and which, though it may not be legally binding, is intended:
 - (a) to encourage giving consumers information about food hygiene standards at establishments, in particular by means of a scoring or rating system (with or without symbols to designate the score or rating); and
 - (b) to apply throughout England (whether or not it is intended also to apply in other parts of the United Kingdom),

and the reference in subsection (5) to the current national scheme in relation to any time is to the national scheme in the form in which it applies at that time.”

APPENDIX 3: MINUTES OF THE DIVISION

Tuesday 8 July 2008

Members present:

Lord Geddes, Chairman

Lord Acton

Lord Bew

Lord Brougham and Vaux

Lord Burnett

In deliberating on the provisions in Clause 10 ('scores on doors'), the Committee divided on one question, as follows.

The Chairman moved that the documents for the purposes of Clause 10 should be consistent with any nationwide scores on doors scheme recommended by the Food Standards Agency. The Committee divided:

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Not-contents: 2

Contents:

Lord Acton

Lord Brougham and Vaux

Lord Geddes

Not-contents:

Lord Bew

Lord Burnett

The question was agreed to.