

Licensing Committee

Monday 12 June 2017

10.00 am at the

Civic Offices, St Nicholas Way, Sutton, SM1 1EA



To all members of the Licensing Committee:-

Chair: Councillor Mary Burstow

Vice-Chair Councillor Samantha Bourne

Councillors: David Bartolucci, Richard Clifton, Margaret Court, Marlene Heron, Miguel Javelot, Richard Marston, Nali Patel, Nighat Piracha, Paul Wingfield, Tony Shields, Moira Butt and Graham Whitham

This is a Council meeting held in public. Additional representations are at the invitation of the Chair of the Committee. If you are a relevant organisation and you wish to submit representations on a proposal contained within the reports to this agenda please submit a request via Committee Services three working days before the meeting date.

Members of the public also have a statutory entitlement to record meetings to which they are admitted, subject to it not disrupting the meeting. They should record only the meeting and not the audience. Anyone proposing to make a recording must inform the Committee Services contact below before the meeting. Mobile devices can interfere with the wireless microphones and induction loop, and if that is the case the Chair may require that such devices are turned off.

PLEASE NOTE: Any decision taken at this meeting does not become definitive until 10am on the third working day after the meeting. Any four members of the Council may notify the Chief Executive by then if they require a decision to be reviewed by the appropriate committee at its next meeting. Please contact the Committee Services representative shown on the front page for further information.

Niall Bolger
Chief Executive
Friday 2 June 2017

Enquiries to: Aimee Wittams-Smith, Committee Services Officer
Tel.: 020 8770 4990 | Email: committeeservices@sutton.gov.uk
Copies available in large print upon request

A G E N D A

1. **Apologies for absence**
2. **Minutes** 1 - 2

To approve as a correct record the Minutes of the meeting held on 20 March 2017.
3. **Declarations of interest**
4. **Update on the changes to the Licensing Act 2003 brought about by the Immigration Act 2016** 3 - 6

This report updates the Licensing Committee on implementation of the Immigration Act 2017, how immigration offences affect Licensing Act 2003 decisions in light of new guidance published by the Home Office and the practical implementation of these changes.
5. **Updates to the Licensing Act 2003 scheme of delegation** 7 - 12

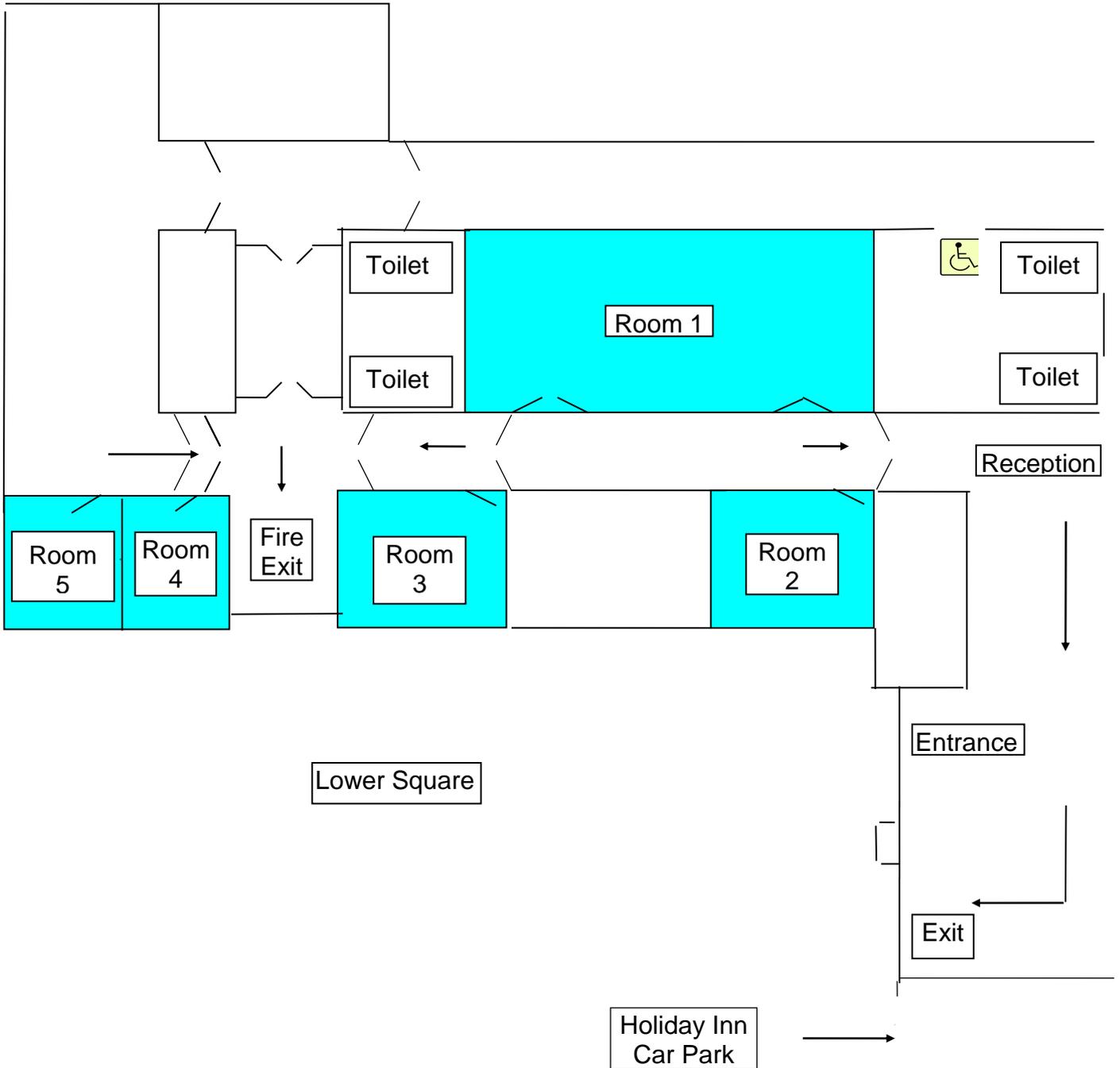
To agree changes to the Licensing Act 2003 scheme of delegation, to reflect additional powers and responsibilities of the Licensing Sub-committee in respect of Personal Licences.
6. **Any urgent business,**

brought forward at the direction of the Chair, who has approved the reason for the urgency.

**CIVIC OFFICES, SUTTON
GROUND FLOOR MEETING ROOMS**

FIRE PRECAUTIONS

If there is a FIRE in the building the fire alarm will sound. Leave the building immediately by the most direct route, either back through reception or the fire exit into Lower Square. Take your coat and any bags with you. Assemble in the car park in front of the Holiday Inn.



Reminder – Declarations of Interests

Members should consider the following interests and whether they have any they should declare.

Disclosable Pecuniary Interests

Where you have a Disclosable Pecuniary Interest in any business of the Authority at this meeting and you have either declared it beforehand in the Register of Members' Interests or to the Monitoring Officer for entry in the Register you must state at this meeting that you have such an interest and then withdraw from the room or chamber where the meeting is being held whilst that business is considered.

Where you have a Disclosable Pecuniary Interest in any business of the Authority at this meeting and have not previously declared it you must declare the nature of that interest at this meeting and then withdraw from the room or chamber where the meeting is being held whilst that business is considered.

Other Pecuniary and Non-Pecuniary Interests

Where you have any other pecuniary or non-pecuniary interest in any business at this meeting you must declare that interest, but may continue to speak and vote on the matter. However, if the interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest then you should declare the interest and withdraw from the room or chamber where the meeting is being held whilst that business is considered.

Further information on these matters can be found in the Council's Code of Conduct and Constitution. If you are in any doubt as to whether you have an interest you should seek advice **before** the committee meeting from Alexa Coates.

If, during the course of the committee meeting, you consider you may have an interest you should always declare it.

**Licensing Committee
20 March 2017****LICENSING COMMITTEE****20 March 2017 at 10.00 am**

MEMBERS: Councillor Mary Burstow (Chair), and Councillors Samantha Bourne, Marlene Heron, Richard Marston, Nighat Piracha, Paul Wingfield, Tony Shields, Moira Butt and Graham Whitham

ABSENT Councillor(s) Jean Crossby, David Bartolucci, Margaret Court, Miguel Javelot and Nali Patel

8. APOLOGIES FOR ABSENCE

Apologies were received from Councillor David Bartolucci and Councillor Margaret Court.

9. MINUTES

The Minutes of the meeting held on 3 October 2016 were approved as a correct record, and signed by the Chair.

10. DECLARATION OF INTERESTS

The Minutes of the meeting held on 3 October 2016 were approved as a correct record, and signed by the Chair.

11. CHANGES TO THE LICENSING ACT 2003

Nick Cloke, Lead Officer - Licensing, introduced the report. From the report, he highlighted the amendments to be made to the Licensing Act 2003 as part of the Policing and Crime Act 2017:

- Powdered and vapourised alcohol to be defined and regulated as alcohol.
- Interim steps put in place ahead of a full review following Summary Review application requested by police to only be appealed against by the applicant following significant change. Less ambiguity about whether steps remain in place after the full review but during the 21 days before the decision takes effect.
- Personal Licences - Licensing authority to be able to revoke a personal licence following conviction for a relevant offence (with appeals being heard by committee)
- Amendments to Section 182 guidance no longer required to go through parliament.
- Section 5 to be amended to allow statutory regulation of Cumulative Impact Policies.

[Post-meeting note: It was confirmed that the above would be implemented on 6 April 2017 and that further consultation would be carried out by the Home Office before the below provisions are enacted]

- Late Night Levy - to be amended to include late night refreshment and to allow authorities to target specific geographical areas to be considered where currently a levy must apply to a whole borough.
- Immigration Act 2016 - Local authorities to ensure applications are received by Home Office. Immigration Officers to be granted permission to enter a premises

where they suspect that offences under the Immigration Act 2014 are being committed.

Councillors sought clarification on the process for how authorities would be informed that a personal license holder has committed an offence, it was confirmed that the fact an offender holds a personal license should emerge during a police investigation, and the police could then inform the relevant authority.

Councillor Moira Butt asked whether the designated Police Officers could take responsibility for checking the immigration status of applicants, and it was confirmed that it was unclear who would be responsible for the checks once the updates to the Licensing Act 2003 were implemented. Councillors discussed the current provisions for ensuring that applicants are who they say they are, particularly in the face of data protection, and what Committee members could do in Sub-Committee hearings to protect against this.

Resolved: That the Licensing Committee noted the updates to the Licensing Act 2003 and associated legislation.

12. UPDATE ON REVIEW OF SPECIAL POLICY ON CUMULATIVE IMPACT

David Kingstone, Licensing & Environmental Compliance Team Leader, introduced the report. He directed the Committee to the 4 main themes which had come to light following discussions on 12 January, outlined on page 14 of the agenda pack.

He added that The Policing and Crime Act 2017 indicates that Cumulative Impact would be given a statutory basis through a change in the Licensing Act 2003, as per the above item, which requires a robust and well-considered approach. David Kingstone informed the Committee that the data sets outlined on page 15 of the agenda pack would be explored and consulted upon with the results to be brought to the September Committee, to then go out to consultation and brought to Committee for approval around December 2017.

Resolved: That the Licensing Committee agreed the data streams being explored, as listed under Paragraph 3.8, and noted the timeline for review of the Special Policy on Cumulative Impact, as per Paragraph 3.11.

13. ANY URGENT BUSINESS

There was no urgent business brought forward.

The meeting ended at 11.01 am

Chair:

Date:

Report to:	Licensing Committee	Date:	12 June 2017
Report title:	Update on the changes to the Licensing Act 2003 brought about by the Immigration Act 2016		
Report from:	Mary Morrissey, Strategic Director Environment Housing and Regeneration		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Mary Burstow		
Author(s)/Contact Number(s):	David Kingstone, Licensing & Environmental Compliance Team Leader 020 8770 5162 / 020 8547 5537 / 07342 055 767 Nick Cloke, Lead Officer Licensing, 020 8770 5622 / 020 8770 4366		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Fair Council 		
Open/Exempt:	Open		
Signed:		Date:	1 June 2017

1. Summary

- 1.1 This report updates the Licensing Committee on implementation of the Immigration Act 2016, how immigration offences affect Licensing Act 2003 decisions in light of new guidance published by the Home Office and the practical implementation of these changes.

2. Recommendations

The Licensing Committee is recommended to:

- 2.1 Note the updates to the Licensing Act 2003 and associated legislation.

3. Background

- 3.1 The Immigration Act received Royal Assent in May 2016 and introduced a number of changes, particularly with respect to illegal working on licensed premises. The licensing elements are contained in Schedule 4 making changes to the Licensing Act 2003 and the principal points of note include the following.

- 3.2 **Premises Licence applications:** The Secretary of State (Home Office) becomes a responsible authority within the definition of the 2003 Act. This allows the Immigration Service to make representations against the grant or variation of a premises licence application. An individual applying for a new premises licence, transfer of an existing licence or giving service of an interim authority notice must have leave to work in the United Kingdom and must provide evidence of



this entitlement at the time of application. In a hearing convened due to the Secretary of State's representation, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so, thereby linking to the prevention of crime and disorder objective.

- 3.3 Under the new framework, a premises licence will lapse if the licence holder ceases to be entitled to work in the United Kingdom.
- 3.4 It should be noted the provisions do not apply to Club Premises Certificates and Temporary Event Notices. The Home Office believe there is little evidence of immigration abuse in respect of premises authorised under Club Premises Certificates, and it would have been disproportionate to apply the requirements to Temporary Event Notices.
- 3.5 **Personal licences:** An individual is not able to apply for a personal licence if he or she is not entitled to live and work in the United Kingdom and an existing personal licence lapses if an individual ceases to be entitled as such. Therefore, if the personal licence of a designated premises supervisor was to lapse, the sale of alcohol on the premises would automatically become unlawful. Premises licence holders could then face prosecution for unlawful sales of alcohol and/or licence reviews. Additionally, the list of 'relevant and foreign offences' in relation to personal licences has been expanded to include 'immigration offences and immigration penalties'. The Secretary of State must consider such offences when determining whether the grant of a personal licence would be prejudicial to the prevention of illegal working in licensed premises.
- 3.6 **Right of Entry to Licensed Premises.** Where a constable or authorised person has reason to believe that offences under the Immigration Act 2014 are being committed, they have a right to enter licensed premises to investigate. An immigration officer is given the same power of entry.

4. Home Office Guidance

- 4.1 The Home Office published new 'Guidance for licensing authorities to prevent illegal working in licensed premises in England and Wales' on 04 May 2017 and sets out what the immigration amendments to the Licensing Act 2003 mean to Licensing Authorities and the Home Office (Immigration Enforcement). In summary these are:
 - 4.1.1 Licensing Authorities are under a duty not to issue licenses to individuals who do not have the required immigration permission to work in a licensable activity.
 - 4.1.2 Home Office (Immigration Enforcement) will undertake the role of a 'responsible authority'. It will also use the power of entry contained within the Licensing Act 2003 to investigate illegal working in premises engaged in licensable activities, working with licensing enforcement officers and the police.

5. Options Considered

- 5.1 For an application for a premises licence or a personal licence to be lawful and valid, it must, when made by an individual(s), be made by someone who is over the age of 18, and, if they are living in the UK, they must be entitled to be in the UK and to work in a licensable activity. Applicants who are not living in the UK are not required to be eligible to work in the UK to hold a personal or premises licence.
- 5.2 In order to discharge their duty, Licensing Authorities must be satisfied that an applicant has the right to work in the UK. To do this applicants must now submit documented evidence to show that the applicant has permission to be in the UK and to undertake work in a licensable activity.
- 5.3 Licensing Authorities are therefore responsible for carrying out the checks to ensure that the applicant is entitled to live in the UK and to work in a licensable activity.
- 5.4 Home Office (Immigration Enforcement) now receive all premises licence and some personal licence applications. They will consider whether there are immigration offences or penalties which lead them to believe that to grant a licence is likely to be prejudicial to the prevention of immigration crime and likely to undermine one of the licensing objectives. If so they may raise representation.
- 5.5 The relevant licence application forms have been amended to contain a list of documents that licence applicants should provide. The applicant must provide their date of birth, their nationality and their residential address. Evidence of their entitlement to work in the UK should also accompany their application, i.e. residency permit, UK passport etc.
- 5.6 If an applicant fails to provide the appropriate documentation from which the licensing authority is satisfied that the individual is entitled to work the Licensing Authority is responsible for following up on these requirement. If the applicant fails to provide the appropriate documentation, the application must be rejected and the licence must not be granted.
- 5.7 It is the responsibility of the licensing authority to be satisfied that an individual's immigration status does not preclude them from holding a premises licence or personal licence.
- 5.8 As a responsible authority the Home Office (Immigration Enforcement) may request that a licensing authority reviews an existing licence where it has concerns relating to the licensing objective of preventing crime and disorder, including immigration crime and preventing illegal working in licensed premises. This is dealt with as a standard review, with a full 28 day consultation period.
- 5.9 In addition, the licensing authority must review a premises licence if the premises to which it relates was made the subject of a compliance order to prevent illegal working. The Licensing Authority has 28 days to determine this type of licence review.

6. Impacts and Implications

Financial

6.1 There are no financial implication arising from this report.

Legal

6.2 Section 36 and Schedule 4 of the Immigration Act 2016 introduce immigration safeguards in respect of licensing applications made in England or Wales on or after 6 April 2017. The intention of the changes are to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

7. Appendices and Background Documents

Appendix letter	Title
None.	

Background documents
Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales (Home Office, May 2017)

Audit Trail		
Version	Final	Date: 1 June 2017
Consultation with other officers		
Finance	No	N/A
Legal	No	N/A
Equality Impact Assessment required?	No	N/A

Report to:	Licensing Committee	Date:	12 June 2017
Report title:	Updates to the Licensing Act 2003 scheme of delegation following changes to Licensing Authority powers under new legislation		
Report from:	Mary Morrissey, Strategic Director Environment Housing and Regeneration		
Ward/Areas affected:	Borough Wide		
Chair of Committee/Lead Member:	Councillor Mary Burstow		
Author(s)/Contact Number(s):	David Kingstone, Licensing & Environmental Compliance Team Leader 020 8770 5162 / 020 8547 5537 / 07342 055 767 Nick Cloke, Lead Officer Licensing, 020 8770 5622 / 020 8770 4366		
Corporate Plan Priorities:	<ul style="list-style-type: none"> • An Open Council • A Fair Council 		
Open/Exempt:	Open		
Signed:		Date:	30 May 2017

1. Summary

- 1.1 To agree changes to the Licensing Act 2003 scheme of delegation, to reflect additional powers and responsibilities of the Licensing Sub-committee in respect of Personal Licences.
- 1.2 As the responsibility for Licensing Functions under the Licensing Act 2003 forms part of the Council's Constitution (Section 3, Part 2), the report seeks to recommend the necessary amendments to the Constitution arising from this report.
- 1.3 The Policing and Crime Act 2017 introduced new powers for the Licensing Authority in relation to Personal Licences, and this report sets out an amendment to the Scheme of Delegation for Licensing decisions which is included at Appendix A of the Statement of Licensing Policy.
- 1.4 The Immigration Act 2016, which came into effect in April 2017, created a new Responsible Authority of the Home Office. This report sets out an amendment to the list of Responsible Authorities forming Appendix C of the Statement of Licensing Policy.

2. Recommendations

The Licensing Committee is recommended to:

- 2.1 Agree that decisions relating to Personal Licences, where the Authority becomes aware that a person has been convicted of a relevant or foreign offence after the licence was granted, is delegated to the Licensing Sub-committee.



- 2.2 Approve the amendments to Appendices A and C of the Statement of Licensing Policy as set out in the report.
- 2.3 Recommend to Council, via the Strategy and Resources Committee, that the amendments to the Licensing Policy appendices be reflected accordingly in Section 3, Part 2 of the Council's Constitution.

3. Background

- 3.1 Members will recall that a report to the March meeting of the Licensing Committee set out a number of proposed changes to the Licensing Act 2003 and the processes supporting applications made under the Act.

The Policing and Crime Act

- 3.2 The Policing and Crime Act 2017 received Royal Assent in April 2017 and with it new powers for dealing with Personal Licence holders convicted of relevant offences came into effect. Previously, only a court could revoke or suspend a Personal Licence on conviction of the holder for a relevant offence.
- 3.3 Now, whenever the Licensing Authority becomes aware that an individual holding a Personal Licence has been convicted of a 'relevant offence' or a 'foreign offence' after 6 April 2017, the Authority is now able to suspend (for up to 6-months) or revoke the Personal Licence. Section 132 of the Licensing Act 2003 has been amended by the Policing and Crime Act to this effect. Relevant offences are set out in Schedule 4 to the Licensing Act 2003, and there is an obligation upon licence holders to notify the Authority if they are convicted of an offence.
- 3.4 The legislation sets out the process an Authority must follow when considering what, if any, action should be taken in respect of a Personal Licence in these circumstances. This process includes a requirement to seek representations from the Personal Licence Holder before making a decision.
- 3.5 The Licensing Authority is specifically empowered in the legislation to make the decision and the Act specifies that this decision cannot be delegated to officers. The Licensing Committee, acting as the Licensing Authority, is however able to appoint sub-committees to determine applications that cannot be delegated to officers.
- 3.6 Members will be aware that all relevant application types under the Licensing Act are already determined by a process of hearings by a sub-committee, including applications for grant of a personal licence by an individual with relevant offences which has always been a power of the Licensing Authority.
- 3.7 It is therefore recommended that the Licensing Sub-committee be further delegated to make decisions on whether a Personal Licence should be suspended, revoked or otherwise in the light of a conviction for a relevant offence that the Authority becomes aware of. This delegation of



decision making aligns with the functions of the Licensing Sub-committee as set out at 8.13(1) of the Council's Constitution.

- 3.8 The Licensing Authority sets out its delegation of Licensing Functions under the Licensing Act at Appendix A of its Statement of Licensing Policy. It is recommended that the table of delegations be amended to reflect the above position, and a draft revised table is given at Appendix A to this report for information.

Immigration Act 2016

- 3.9 Members will recall that immigration offences are now relevant offences under the Licensing Act 2003 and can be taken into consideration when making decisions. The Immigration Act 2016 also created an additional Responsible Authority of the Secretary of State (Home Office). This provides the Home Office - through the Immigration Enforcement team - with an opportunity to raise representations and a requirement for applicants to send copies of relevant applications to the Immigration Service's Alcohol Licensing Team.
- 3.10 The committee is recommended to resolve that the list of Responsible Authorities included at Appendix C of the Statement of Licensing Policy is amended to include the contact details for the Secretary of State (Home Office) as a Responsible Authority.

4. Options Considered

- 4.1 The Licensing Committee could itself consider Personal Licences in the situations set out in the report, however this would require all members of the committee being available to consider any representations. This would also be at odds with the delegation for new applications for Personal Licences, which are already delegated to sub-committees when the applicant has relevant offences. It is therefore considered most appropriate for the sub-committee to be delegated to consider these cases.

5. Impacts and Implications

Financial

- 5.1 The cost of holding a sub-committee meeting to consider any cases will be met from existing budgets, and where possible cases will be brought to an already established meeting for the purposes of efficiency.

Legal

- 5.2 The Council is obliged to consult on amendments to its Statement of Licensing Policy, however as this report recommends amendments to the Appendices of the Policy only, it is not considered that the Policy is being changed and as such consultation is not required.



6. Appendices and Background Documents

Appendix letter	Title
A	Draft revised Table of Delegations for Licensing Functions

Background documents
Statement of Licensing Policy (Licensing Act 2003)

Audit Trail		
Version	Final	Date: 1 June 2017
Consultation with other officers		
Finance	No	N/A
Legal	Yes	Saima Khan
Equality Impact Assessment required?	No	N/A

APPENDIX A**TABLE OF DELEGATIONS OF LICENSING FUNCTIONS**

MATTER TO BE DEALT WITH	FULL COMMITTEE	SUB COMMITTEE	OFFICER
Application for personal licence		If a police objection Made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence or club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence or club premises certificate			If no relevant representation made
Application to vary designated premises supervisor		If a police objection Made	All other cases
Request to be removed as designated premises supervisor			All cases
Applications for transfer of premises licence		If a police objection Made	All other cases
Application for Interim Authorities		If a police objection Made	All other cases
Application to review premises licence or club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	

Determination of a police objection to a temporary event notice		All cases	
Determination of an Environmental Health objection to a temporary event notice		All cases	
Making a representation on behalf of the Licensing Authority			Licensing Manager
Initiating a Review on behalf of the Licensing Authority			Licensing Manager
Determine status of a Personal Licence when the holder has been convicted of relevant offences after the licence has been granted		All cases	