



Report to:	Licensing Committee	Date:	20 March 2017
Report title:	Changes to the Licensing Act 2003 brought about by the Policing and Crime Act 2017 and the Immigration Act 2016		
Report from:	Mary Morrissey - Strategic Director, Environment, Housing and Regeneration		
Chair of Committee/Lead Member:	Councillor Mary Burstow		
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Corporate Plan Priorities	<ul style="list-style-type: none"> • A Fair Council 		
Open/Exempt:	Open		
Signed:	 Simon Latham, Executive Head	Date:	8 March 2017

1. Introduction

1.1 This report updates the Licensing Committee on changes to the Licensing Act 2003 and associated legislation brought about by the Policing and Crime Act 2017 and the Immigration Act 2016.

2. Recommendations

The Licensing Committee is recommended to:

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

3. Policing and Crime Act 2017

3.1 In March 2016 the Home Office published its 'Modern Crime Prevention Strategy'. This lists 6 key drivers of crime, the last of which is alcohol. To address this, the strategy proposed to:

- give more powers for local authorities and police;
- improve late night levy by making it more flexible for local areas;
- Give the Police and Crime Commissioner's the right to request that local authorities

- consult on introducing a late night levy; and
- Put Cumulative Impact Policies on a statutory footing.

3.2 The proposed changes to the Licensing regime, detailed below, are contained within the Policing and Crime Act 2017, with the aim to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.

Meaning of “alcohol”

3.3 Section 191 of the 2003 Act defines alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. This is amended so as to clarify that powdered alcohol and vaporised alcohol are to be regulated in the same way as liquid alcohol.

Interim steps pending review: representations

3.4 Section 53A of the 2003 Act provides for the police to make an application for a summary review of a premises licence, if the relevant premises are associated with serious crime or serious disorder. The licensing authority must consider the application within 48 hours and impose ‘interim steps’ (temporary conditions) if necessary.

3.5 When a licensing authority considers an application for a summary review, it may take interim steps without first giving the holder of the premises licence an opportunity to make representations. This is because in instances of serious crime and serious disorder it may be necessary to take immediate action in order to protect the public. Section 53B of the 2003 Act allows the licence holder to make representations after the interim steps have been taken, and then requires the licensing authority to hold another hearing to consider those representations within 48 hours. The 2003 Act does not limit the number of times that a premises licence holder may make representations, with the result that the licensing authority must hold a hearing each time that relevant representations are received.

3.6 Section 53B is amended so that after the licensing authority has held a hearing to consider the interim steps, the premises licence holder may only make further representations if there has been a material change in circumstances since that hearing.

Summary reviews of premises licences: review of interim steps

3.7 Following from the above measure, Section 53A requires the review of the premises licence to take place within 28 days of receipt of the application. The review takes the form of a hearing at which the licensing authority will determine what action should be taken on a permanent basis.

3.8 The decision made at the review hearing does not take effect until the expiry of the time limit for appealing (21 days) during which the decision may be appealed by the licensee or the police to a magistrates’ court, or until an appeal is disposed of. There is currently an ambiguity in the 2003 Act about whether the interim steps remain in place after the review hearing, and whether they can be withdrawn or amended by the licensing authority. The

amendments made by this clause will address the ambiguity about what happens to the interim steps between the review hearing and the review decision coming into effect.

- 3.9 Section 53 is amended by inserting a new Section 53D to require the licensing authority, at the review hearing, to review any interim steps that have been taken. The licensing authority must consider whether the interim steps are appropriate for the promotion of the crime prevention objective, consider any relevant representations, and determine whether to withdraw or modify the steps taken. For example, there may have been a change in circumstances or further evidence provided at the hearing which means that the interim steps originally imposed are no longer necessary for the period of time between the review hearing and the review decision coming into effect.
- 3.10 Finally Part 1 of Schedule 5 to the 2003 Act is amended to provide for an appeal to be made by the police or licensee, against the decision regarding the interim steps, taken at the review hearing. This appeal must be heard by a Magistrates Court within 28 days.

Personal licences: licensing authority powers in relation to convictions

- 3.11 Currently a personal licence may be suspended or forfeited by a court on conviction for a relevant offence (that is, one listed in Schedule 4 to the 2003 Act). This amendment gives licensing authorities a similar power. When the licensing authority that has granted a personal licence becomes aware that the licence holder has been convicted of a relevant offence, foreign offence or been required to pay an immigration penalty, the licensing authority may revoke the licence or suspend it for a period of up to six months. The Immigration Act 2016 adds immigration offences to the list in Schedule 4 to the 2003 Act (see below). This is subject to a new process of representation against a proposed decision, and a new provision of appeal.

Licensing Act 2003: guidance

- 3.12 Section 182 of the 2003 Act provides that the Secretary of State must issue guidance to licensing authorities on the discharge of their functions under the Act, and the guidance must be approved by Parliament before it can be issued. The 2016 Act removes the parliamentary procedure and the guidance will now take effect as soon as it is published by the Home Office.

Cumulative Impact Policies

- 3.13 Cumulative impact policies (CIPs) are not referred to in 2003 Act. They are discussed in Home Office guidance (March 2015) issued under section 182 of the Act where “cumulative impact” means “the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area”. Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. This statement can, following consultation, include a CIP, the aim of which is to limit the growth of licensed premises where the promotion of the licensing objectives is being compromised.

3.14 Section 5 of the 2003 Act is amended by inserting a new Section 5A that allows a licensing authority to publish a cumulative impact assessment if it considers that the number of licensed premises in an area is such that granting further licences would be inconsistent with its duty to promote the licensing objectives. The licensing authority will have to publish the evidence for its opinion and consult the list of persons set out in the 2003 Act. A cumulative impact assessment would not prevent the grant or variation of a licence. A responsible authority or other person would need to make a representation to challenge an application. If no representations were made, the licensing authority would have to grant the licence or variation. The licensing authority must review the evidence supporting a CIP at least every three years.

Late Night Levy

3.15 Local authorities were given the power to introduce a late night levy through the Police Reform and Social Responsibility Act 2011 (the 2011 Act). The levy is a discretionary power enabling licensing authorities to raise a contribution towards policing the late night economy from holders of premises licences or club premises certificates. The levy must cover the whole of the licensing authority's area and the authority can choose the period during which the levy applies every night, between midnight and 6am. The amount of the levy is prescribed nationally and is based on the current licence fee system under the Licensing Act 2003, with holders being placed in bands based on their premises rateable value.

3.16 The net levy revenue must be split between the licensing authority and the relevant police and crime commissioner (PCC). At least 70% of the net revenue must be given to the police. The licensing authority can retain up to 30% to fund the services it provides to manage the night-time economy.

3.17 Section 125 of the 2011 Act is amended to allow licensing authorities to target specific geographical locations with a Late Night Levy (rather than, as now, applying it to the whole of the local authority area). It extends the levy to include late night refreshment outlets. The PCCs will be able to request the licensing authority to propose introducing a levy, and the Act will require licensing authorities to publish information about how funds raised by the levy are spent so that those paying it are clearer about how it is being used.

4. Immigration Act 2016

4.1 The Immigration Act received Royal Assent in May 2016 and proposes to introduce a number of changes, particularly with respect to illegal working on licensed premises. The licensing elements are contained in Schedule 4 of the new Act, which makes changes to the Licensing Act 2003 and the principal points of note include the following.

Premises Licence applications

4.2 The Secretary of State (Home Office) becomes a responsible authority within the definition of the 2003 Act. This will allow the Immigration Service to make representations against the

grant or variation of a premises licence application. An applicant applying for a new premises licence, transfer of an existing licence or service of an interim notice not only has to be over the age of 18, but will also have to hold leave to work in the United Kingdom. In a hearing convened due to the Secretary of State's objection, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

- 4.3 Under the current framework, a premises licence will lapse on the death, incapacity or insolvency of a premises licence holder. The premises licence will now also lapse if the licence holder ceases to be entitled to work in the United Kingdom.

Personal licences

- 4.4 An applicant will not be able to apply for a personal licence if he or she is not entitled to live and work in the United Kingdom; an existing personal licence will lapse if an individual ceases to be entitled as such. The list of 'relevant and foreign offences' in relation to personal licences will be 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.

Right of Entry to Licensed Premises

- 4.5 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 now given the same power of entry.

5. Appendices and Background Documents

Appendix letter	Title
N/A	

Background documents
None

Audit Trail		
Version	Final	Date: 08 March 2017
Consultation with other officers		
Finance	No	N/A
Legal	No	N/A
Equality Impact Assessment required?	No	N/A