

LEGISLATIVE UPDATE

Committee	Licensing Committee
Officer Reporting	Legal Services
Papers with report	Appendix 1 – List of Documents Demonstrating Entitlement to Work
Ward	All

SUMMARY

To advise the Licensing Committee on amendments to the Licensing Act 2003 (the "Act") brought about by the Policing and Crime Act 2017 ("PCA 17") and the Immigration Act 2016 ("IA 16").

RECOMMENDATIONS:

That the Committee:

- 1. Advise / determine whether new powers related to Personal Licences will be exercised by means of Sub-Committee hearing or by means of an application on paper;**
- 2. Note that consequential amendments to the Council's Licensing Policy and Sub-Committee Hearing Protocol will be tabled at future meetings.**

SUPPORTING INFORMATION

The Immigration Act 2016 received Royal Assent on 12 May 2016 and makes amendments to the Licensing Act 2003 in relation to:

- entitlement to work
- the Secretary of State becomes a new responsible authority
- prohibition on applying for or holding a premises licence
- restrictions on the use of Interim Authority Notices
- restrictions on Transfer of Premises Licence
- personal Licence Restrictions
- existing Personal Licence Alterations

A commencement order for the above was published on 14 March 2017 and comes into force on 6 April 2017 (Immigration Act 2016 (Commencement No. 3 and Transitional Provision) Regulations 2017/380).

The Policing and Crime Act 2017 received Royal Assent on 31 January 2017 and makes amendments to the Licensing Act 2003 as follows:

- amend the meaning of alcohol;
- amend the provisions for Summary Reviews;
- provide a new power for the Licensing Authority to suspend or revoke a personal

- licence when notified of a conviction for a relevant offence;
- expand the list of relevant offences for personal licences holders, and remove the need for the Secretary of State to lay statutory guidance before Parliament;
- simplify the process for issuing S182 guidance;
- place cumulative impact policies on a statutory footing;

1. Changes Introduced by the Immigration Act 2016

Entitlement to Work

A new section has been inserted into the Licensing Act 2003 which detail a person's entitlement to work. Individuals will not be able to apply for a premises licence unless they are entitled to work in the United Kingdom (UK). An individual is entitled to work in the UK if they have leave to enter or remain in the UK and are not subject to a condition preventing them from doing work relating to a licensable activity.

Personal Licences

A personal licence may not be issued to an individual who:

- Does not have the right to live and work in the UK; or
- Is subject to a condition preventing him or her from doing work relating to the carrying on of a licensable activity.

Any personal licence issued in respect of an application made on or after 6 April 2017 will become invalid if the holder ceases to be entitled to work in the UK.

Applicants must demonstrate that they have the right to work in the UK and that they are not subject to a condition preventing them from doing work relating to the carrying on of a licensing activity. They do this by providing with the application copies or scanned copies of the specified documents (which do not need to be certified). The documents which demonstrate entitlement to work in the UK are set out in the Appendix 1 to this report ("the Documents").

If the applicant has a UK passport, a scanned copy of this document is all that is needed. If not, the applicant must provide a copy of one of the other Documents. Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical policy, an EHIC card or an S1, S2 or S3 form. Originals of the Documents must not be sent to licensing authorities.

If the document copied is a passport, a copy of the following pages should be provided:

- Any page containing the holder's personal details including nationality;
- Any page containing the holder's photograph;
- Any page containing the holder's signature;
- Any page containing the date of expiry; and
- Any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.

The offences in Schedule 4 of the Licensing Act 2003 are amended to add immigration offence and immigration penalty. A person who currently holds a Personal Licence must give notice of any immigration conviction or penalty to the Licensing Authority.

The Criminal Record Disclosure form is now renamed “Disclosure of Convictions and Civil Immigration Penalties and Declaration” form. As well as relevant and foreign offences, a personal licence holder is now asked to declare any civil immigration penalties received.

Premises Licence Applications

Individual applicants (including those in a partnership) must declare that they understand.

1. That the licence will not be issued if they do not have the entitlement to live and work in the UK; and
2. That the licence will become invalid if they cease to be entitled to live and work in the UK.

Further, the Applicant must declare:

1. That the DPS named in the application is entitled to work in the UK and is not subject to conditions preventing him or her from doing work relating to a licensable activity); and;
2. That the applicant has seen a copy of the DPS’s proof of entitlement to work, if appropriate.

Applicants must demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensing activity. They do this by providing with this application copies or scanned copies of one of the Documents. If the change in work status results in the lapse of a premise licence, an Interim Authority Notice must be submitted within 28 days in order to reinstate the licence. A copy of the Notice must be served on the Home Office Immigration Enforcement service.

DPS Variations

The application form is amended to include nationality, place of birth and date of birth. The form contains a warning that civil penalties may be incurred by persons who work without the proper entitlement to work. The consent form for a Designated Premises Supervisor includes the following:

“I also confirm that I am entitled to work in the United Kingdom and am applying for, intend to apply for or currently hold a personal licence, details of which I set out below.”

Transfer Applications

Applicants seeking a transfer of a Premises Licence will now have to supply a document listed in Appendix 1 as proof that they are able to work in the UK.

In addition, a copy of the transfer application must be served on the Secretary of State who is now a Responsible Authority. If satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the relevant licensing authority a notice,

within 14 days of having been notified of the application, stating the reasons for being so satisfied. Where the above notice is given, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

New Responsible Authority

The Secretary of State will be an additional Responsible Authority where the premises licence authorises the sale of alcohol or late night refreshment. Responsible Authorities under the Licensing Act are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority.

Restrictions on the Use of Interim Authority Notices

When a premises licence for alcohol sales or late night refreshment is in existence, it will lapse if the holder ceases to have the right to work in the UK (in the same way as on death, insolvency etc.).

2. Changes Introduced by the Policing and Crime Act 2016

Definition of “alcohol

The definition of “alcohol” provided in the Licensing Act 2003 is expanded include alcohol “in any state.” This will mean powdered and vapourised alcohol will also be regulated under the Licensing Act 2003.

Summary Reviews: Representations Against Interim Steps

A summary review is a “fast-track” licence review process that can be applied for by the Police in the case where a licensed premises is associated with serious crime and disorder. Within 48 hours of receipt of a summary review application, the licensing authority must decide what interim steps, if any, to take pending the full review hearing, which must take place within 28 days.

Once the interim steps have been decided, a licence holder can make representations against the interim steps and the licensing authority then has to hold a hearing to consider these representations within 48 hours.

Currently there is no limit on the number of times a licence holder can make representations against the interim steps during the period before the full review hearing takes place. This means that the licensing authority could have to hold a hearing every 48 hours if a licence holder made repeated representations against the interim steps imposed by the licensing authority. Section 136 of the PCA 17 puts in place a restriction so that licence holders will only be able to make further representations after their initial representations have been considered, if there has been a material change in circumstances since the consideration hearing.

Summary Reviews of Premises Licences: Review of the Interim Steps

Following receipt of an application for a summary review, the full hearing to review the premises licence must take place within 28 days of receipt of the application. The decision taken at the review hearing only comes into effect once the time limit for appealing (21 days) has expired or

any appeal has been disposed of. There is ambiguity in the 2003 Act about whether the interim steps remain in place during this period. This has resulted in licensed premises, closed due to serious problems, re-opening pending the outcome of an appeal. There has been confusion for some time about the status of the interim steps imposed by the Licensing Authority after the full review hearing has taken place. Section 137 of the PCA 17 will amend the Licensing Act 2003 so as to require the Licensing Authority to determine at the review hearing what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making an appeal. Licensees and the police will be able to appeal the interim steps to a magistrates' court.

Personal Licences: Licensing Authority Powers in Relation to Convictions

Currently a personal licence may be suspended or forfeited by a court on conviction of a relevant offence. Relevant offences are listed in Schedule 4 to the 2003 Act and include violent and sexual offences, drugs offences and firearms offences. However, the evidence suggests that the courts are not routinely exercising their powers in this regard, often because they are not aware that an offender holds a personal licence.

Section 138 will allow licensing authorities to suspend or revoke a personal licence once they become aware that a personal licence holder has been convicted of a relevant offence. A Licensing Authority may not revoke a personal licence before the time for appeal against any conviction has expired, or, in the case where an appeal is lodged, before that appeal is determined. In addition, the Licensing Authority will have to give notice to the personal licence holder in order that he or she can make representations within 28 days of being notified that the Licensing Authority is to consider revoking the personal licence. There is no right to a hearing, so it appears that the matter will be decided on the papers and behind closed doors. If the Licensing Authority does not intend, following deliberation, to revoke or suspend the licence, it must inform police accordingly and police will then have 14 days to make their own representations. Again, there is no provision for any hearing but the Licensing Authority must then consider the matter further, reach a decision and notify the parties.

Whilst the Regulations do not make allowance for a hearing to take place with regard to the suspension of a personal licence or a further representations hearing, Section 7 of the Licensing Act 2003 permits the Licensing Authority to make its own arrangements for the discharge of its licensing functions. This means that the Licensing Committee is able to direct which matters are delegated to Sub-Committees. Accordingly, the Licensing Committee may wish to consider whether the revocation hearing and representation hearing for personal licences:

- should be delegated to a Sub-Committee or should remain a function of the full Licensing Committee; and
- whether the application should be determined on the papers or by means of a hearing

The personal licence holder will have the right to appeal against any suspension or revocation of the personal licence, following the standard appeals procedure to the Magistrates Court.

Further Relevant Offences

Conviction for a relevant offence can be grounds for refusing a new personal licence, or for suspending or revoking an existing licence. Currently, there are some serious offences which

are not included in the definition of “relevant offence”.

The following offences will be added to the definition by Section 139 of the PCA 17:

- the sexual offences listed in Schedule 3 to the Sexual Offences Act 2003;
- the violent offences listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003;
- the manufacture, importation and sale of realistic imitation firearms contrary to section 36 of the Violent Crime Reduction Act 2006;
- using someone to mind a weapon contrary to section 28 of the Violent Crime Reduction Act 2006; and
- the terrorism-related offences listed in section 41 of the Counter-terrorism Act 2008.

A full list of relevant offences will be provided to the Licensing Committee at the meeting.

Licensing Act 2003: S182 Guidance

Section 182 of the 2003 Act requires the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act, and that the guidance be laid before Parliament and be subject to the negative resolution procedure every time it is updated. The licensing framework has been in place for ten years, and in that time changes to the guidance have not been subject to parliamentary debate. The requirement to lay revised guidance before Parliament is therefore considered unnecessary and at odds with many other statutory guidance provisions. As a result of Section 140 of the PCA 17, the Secretary of State will no longer have to lay the Section 182 guidance before Parliament for approval before it comes into effect.

Implications on related Council policies

The Licensing Committee may wish to review its existing licensing policies in order to take into account the changes introduced by the IA16 and PCA 17.

Financial Implications

The changes introduce a requirement for greater enforcement and monitoring of licences by Council officers. This will have an effect on officer time and may affect staffing levels. Any financial implications arising from staffing levels and officer duties fall within the remit of the relevant Council Directorate.

Legal Implications

Legal implications are contained within this report.

BACKGROUND PAPERS

None

Documents which demonstrate entitlement to work in the UK

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British Citizen of the UK and Colonies having the right of abode in the UK [please see report above about which sections of the passport should be copied].
- An expired or current passport or national identity card showing the holder, or a person name in the passport as the child of the holder is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has not time limit on their stay in the UK.
- A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A full birth or adoption certificate issued in the UK, which includes the name(s) of at least one of the holder's parents or adoptive parents, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British Citizen, when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is

allowed to work relation to the carrying on of a licensable activity.

- A current Residence Card issued by the Home Office to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A current Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, less than 6 months old, issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of a European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:
 - Evidence of the applicant's own identity – such as a passport,
 - Evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - Evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - Working e.g. employment contract, wage slips, letter from employer,
 - self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - studying e.g. letter from the school, college or university and evidence of sufficient funds; or
 - self-sufficient e.g. bank statements.