

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

Agenda Item No. 9

meeting date: 4 APRIL 2017
 title: IMPLEMENTATION OF AMENDMENTS TO THE LICENSING ACT 2003
 submitted by: CHIEF EXECUTIVE
 principal author: MAIR HILL

1 PURPOSE

1.1 To inform Committee of the implementation of amendments to the Licensing Act 2003.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - }
- Corporate Priorities - } Consideration of these issues will promote the Council's aim to be a well-managed Council.
- Other Considerations - }

2 BACKGROUND

2.1 The Policing and Crime 2017 (Commencement Number 1 and Transitional Provisions) Regulations 2017 was made on 13 March 2017 and brings into effect a number of provisions within the Policing and Crime Act 2017 ("**2017 Act**") from 6 April 2017. These provisions amend a various sections of the Licensing Act 2003 ("**2003 Act**") including:

- The definition of alcohol;
- Summary Reviews;
- Suspension/revocation of personal licences;
- Relevant offences; and
- Section 182 guidance.

The detail relating to each of these issues is set out below.

3 ISSUES

Section 135 (meaning of "alcohol")

3.1 The 2003 Act defines alcohol as "spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor". Section 135 of the 2017 Act amends the 2003 Act so that it includes alcohol in any form. Parliament's intention in making this amendment is to ensure that the law is clear that both powdered and vaporised alcohol fall within the regulatory regime provided for in that Act.

- 3.2 Powdered alcohol is not yet available in the UK. It has been authorised for sale in the United States of America but as far as is known it is not yet available to buy in America or anywhere else. It is designed to be mixed with water, or a mixer such as orange juice or cola, to make a drink of the normal strength (for example, a single shot of vodka).
- 3.2 Vaporised alcohol is alcohol in the form of a vapour which can be inhaled either straight from the air into which the vapour is pumped or by using an inhalation device. It is currently available in the UK.

Sections 136 & 137 - Summary review: interim steps

- 3.4 If licensed premises become associated with serious crime or disorder the police can under Section 53A of the 2003 Act, make an application to the licensing authority for a summary review of the licence. Under Section 53B of the 2003 Act, the licensing authority must consider whether it is necessary to impose interim steps (temporary conditions on a licence), for example, suspending the premises licence. These interim steps enable the licensing authority to act quickly in cases where there has been serious crime or serious disorder as it can take the steps immediately without first being obliged to hear representations from the holder of the premises licence in question. The hearing to review the licence must take place within 28 days of receipt of the application.
- 3.5 If the Licensing authority imposes interim steps under Section 53B the premises licence holder is entitled to make representations in respect of those steps and the licensing authority must hold a hearing to consider those representations within 48 hours of receipt. The 2003 Act as currently drafted does not limit the number of times that the 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 136 of the 2017 Act amends Section 53B of the 2003 Act 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. For example the licensee has employed additional door staff or increased security at the premises this could mean that a restriction on the hours during which alcohol may be sold may no longer be necessary. There may also be changes in circumstance, for example if the summary review application has arisen from gang related violence or drug offences on the premises and the individuals involved are being dealt with by the criminal justice system.
- 3.6 There is currently legal ambiguity over whether or not interim steps remain in place until the process is complete, once appeal channels have been exhausted, or whether they can be withdrawn or amended at an earlier stage.
- 3.6 Section 137 amends the 2003 Act to introduce a new Section 53D. This provides that the interim steps must be considered at the review hearing and that the licensing authority has power at that stage to consider representations made in relation to the interim steps and to consider whether to modify or withdraw them. It also gives the licensing authority power to impose interim steps at the review hearing but makes clear that these will only have effect until either the time for period in which to appeal against the decisions taken on summary review has expired, any appeal against the review of the premises licence is disposed of or the end of the period determined by the licensing authority (which may be no longer than either of the two preceding time frames).

- 3.7 Parliament's intention in making this amendment is to ensure that licensing authorities can take appropriate action to protect the public and that businesses subject to summary reviews are treated fairly.

Section 138 – Personal licences: licensing authority powers in relation to convictions

- 3.8 The 2003 Act contains provision to enable a criminal court to order the forfeiture or suspension of a personal licence where the licensee has been convicted before the court of a relevant offence (namely one of the offences specified in Schedule 4 to the 2003 Act). Where a personal licence is revoked or suspended the licensee will be prevented from selling or supplying alcohol.
- 3.9 Where the holder of a personal licence is charged with a relevant offence, he or she must produce the licence to the court before the case against him or her is first heard. A personal licence holder is also required to notify the licensing authority where he or she is convicted of a relevant offence or a foreign offence. The licensing authority does not have the ability to suspend or revoke the licence; nor is there provision for a court to order the forfeiture or suspension of a licence other than at the point the licensee is being sentenced for a relevant offence.
- 3.10 Section 138 amends the 2003 Act to give licensing authorities the power to revoke or suspend a licence and sets out the procedure for doing so, and the steps it must take if it decides not to revoke the licence. The power to do so can be delegated to a sub-committee or officer.

Section 139 – Licensing Act 2003: addition of further relevant offences

- 3.11 Section 139 of the 2017 Act amends Schedule 4 of the 2003 Act to include additional relevant offences; in particular it expands the list of relevant offences to include:
- The sexual offences listed in Schedule 3 of 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 fire arms 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 2004; and
 - The terrorism –related offences listed in section 41 of the Counter- terrorism Act

Section 140 – Licensing Act 2003: Guidance

- 3.12 The current provision under 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. Section 140 of the 2017 Act amends the 2003 Act to remove the parliamentary procedure and the guidance will take effect as soon as it is published.

4. RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – Resources will be required to implement the requirements of the Act
- Technical, Environmental and Legal – Improved control of licence holders should improve public safety.
- Political – No implications identified.
- Reputation – Improved public safety will enhance the Council's reputation.
- Equality & Diversity – no implication identified

5. **RECOMMENDED THAT COMMITTEE**

5.1 Note the contents of this report.

5.2 Delegate the power to suspend or revoke personal licences to Officers as set out in the Licensing Delegation Scheme at **Appendix 1**.

MAIR HILL
SOLICITOR

MARSHAL SCOTT
CHIEF EXECUTIVE

BACKGROUND PAPERS

For further information please ask for Mair Hill, extension 3216

REF: MJH/Licensing Committee/4 April 2017

APPENDIX 1

DELEGATION OF FUNCTIONS - LICENSING

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Licensing Act 2003			
Application for personal licence		If an objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to objection 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	
Revocation/Suspension of personal licence			All cases
Private Hire and Hackney Carriages			
Application for private hire vehicles, drivers or operator's licence			All cases
Application for hackney carriage vehicle or drivers licence			All cases
Application for any of the licenses referred to at 1 or 2 where refusal is contemplated		If requested by or on behalf of the applicant	If no representations made in consultation with Chairman
Variation of conditions/review of bye laws	All cases		
Formulation and implementation of policy	All cases		
Suspension/revocation of any licence			All cases
Investigation of complaints/infringements			All cases

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Enforcement action to include court proceedings and acting jointly with other enforcement bodies			All cases
Designation of vehicles pursuant to Section 167 of Equality Act 2010			All cases
Determination of applications for exemption and issue of certificate of exemption pursuant to Section 166 of Equality Act 2010			
Setting of fares and fees	All cases		
Gambling Act 2005			
Final approval of three years licensing policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)		X	
Application for premises licences (gambling)		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence (gambling)		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence (gambling)		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence (gambling)		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	Where no objections made/objections have been withdrawn
Cancellation of club/gaming/club machine permits		X	
Application for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	
Revocation of licence		All Cases	
Cancellation of licence			All cases
Make/amend regulations prescribing standard conditions, terms and restrictions	All cases		
Setting of fees	All cases		
Waiver			All cases

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Sex Establishments			
To undertake the functions relating to the licensing of sex establishments under the provisions of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982	All cases		
To make and amend policy relating to the licensing of sex establishments	All cases		
To enforce the provisions of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982	All cases		All cases
Revocation of licence		All Cases	
Cancellation of licence			All cases
Setting of fees	All cases		
Scrap Metal Dealers Act 2014			
Application for grant, renewal or variation of application.		Where the Applicant/Licence Holder wishes to make oral representations pursuant to Schedule 1 paragraph 7 of the Scrap Metal Dealers Act 2013 or where Officers elect to refer the decision to the Sub-Committee.	All cases save where the Applicant or Licence Holder wishes to make oral representations pursuant to Schedule 1 paragraph 7 of the Scrap Metal Dealers Act 2013 or where Officers elect to refer the decision to the Sub-Committee.
Revocation of licence		Where the Applicant/Licence Holder wishes to make oral representations pursuant to Schedule 1 paragraph 7 of the Scrap Metal Dealers Act 2013 or where Officers elect to refer the decision to the Sub-Committee.	All cases save where the Applicant or Licence Holder wishes to make oral representations pursuant to Schedule 1 paragraph 7 of the Scrap Metal Dealers Act 2013 or where Officers elect to refer the decision to the Sub-Committee.
Cancellation of licence			All cases
Setting of fees	All cases		
To undertake the functions	All cases		

Matter to be dealt with	Full Committee	Sub-Committee	Officers
relating to the licensing of Scrap Metal Dealers under the Scrap Metal Dealers Act 2013			
To make and amend policy relating to the licensing of scrap metal dealers	All cases		
To enforce the provisions of the Scrap Metal Dealers Act 2013			All cases

The following officers shall be authorised for the purposes of carrying out licensing and enforcement functions on behalf of the Committee (vehicle, operator, driver, Licensing Act and Gambling Act).

Head of Legal and Democratic Services
Council Solicitors
Administration Assistant (Electoral and Licensing)
Administration and Licensing (Alcohol & Entertainment) Officer
Electoral and Licensing Officer
Licensing Enforcement Officer
Taxi Enforcement Officer
Legal Assistant
Corporate Property Officer and Legal Officer

