

REPORT OF THE CHIEF EXECUTIVE

LICENSING COMMITTEE – 6 MARCH 2017

AMENDMENTS TO THE LICENSING ACT 2003 CONTAINED IN THE POLICING AND CRIME ACT 2017

1.0 PURPOSE OF REPORT

- 1.1 To advise the Committee of amendments to the 2003 Act contained in the Policing and Crime Act 2017.

2.0 DESCRIPTION OF DECISION

- 2.1 The Committee is requested to note the contents of this report.

3.0 INTRODUCTION/BACKGROUND

- 3.1 On 31 January 2017 the Policing and Crime Act 2017 (“the Act”) received Royal Assent. Part 7 of the Act contains amendments to the Licensing Act 2003 (“the 2003 Act”). The amendments will not come into force until such time as a commencement order is issued by the Government. It is anticipated that the Government will bring these amendments into effect in two stages with the first stage being implemented in April 2017 and the second stage which concerns the amendments regarding Cumulative Impact Assessments and Late Night Levies being implemented at a later date.

4.0 CURRENT POSITION

- 4.1 A summary of the amendments to the Licensing Act is set out below.

4.2 POWDERED/VAPORISED ALCOHOL

Powdered alcohol is not yet available in the UK. It has been authorised for sale in the USA but as far as is known it is not yet available to buy in the USA 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). The 2003 Act defines alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. As a result it is unclear whether powdered alcohol would fall within the current licensing regime.

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.

The Act amends the 2003 Act to define alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor (in any state)” therefore ensuring that the law is clear that both powdered and vaporised alcohol fall within the regulatory regime.

4.3 **SUMMARY REVIEW**

If a licensed premises becomes associated with serious crime or disorder the police can make an application to the Council for a summary review of the licence. The Council must consider within 48 hours whether it is necessary to impose interim steps (temporary conditions on a licence), for example, suspending the premises licence. These interim steps enable the Council 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.

However, the Government believes that there is currently a 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. The Government has received feedback which indicates that the legislation is being interpreted in some areas in a way which means that businesses are remaining closed or significantly restricted due to interim steps, sometimes for months, while an appeal is lodged. In other areas the opposite is happening and this can result in premises which pose a risk to the public continuing to operate during the appeal period.

The Act amends the law to ensure that Councils can take the appropriate action to protect the public and businesses subject to summary reviews are treated fairly.

The Act requires the Council, at the review hearing, to review any interim steps that have been taken. The Council 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.

The Act also provides 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 within 28 days.

Upon commencement the changes will apply to all applications for a summary review which have been received by the Council but which have not yet reached the review hearing stage.

4.4 **PERSONAL LICENCES**

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. Where a personal licence is

revoked or suspended the licensee will be prevented from selling or supplying alcohol.

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 Council where he or she is convicted of a relevant offence or a foreign offence. The Council currently 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.

The Act amends the 2003 Act to give Councils the power to revoke or suspend a licence, and updates the list of relevant offences.

4.5 CUMULATIVE IMPACT ASSESSMENTS

Cumulative Impact Assessments (referred to as cumulative impact policies (“CIPs”)), prior to being placed on a statutory footing, are intended to assist Councils in carrying out their functions in relation to controlling the number or type of licence applications granted in an area where there is evidence of problems caused by high numbers of licensed premises concentrated in the area. The CIP scheme is currently set out in the statutory guidance issued under section 182 of the 2003 Act. The Government’s Modern Crime Prevention Strategy, published in March 2016, committed to putting CIPs on a statutory footing in order to provide greater clarity and legal certainty about their use and to ensure that any cumulative impact assessment is based on evidence. The Act gives effect to this. It also contains certain requirements as to the consultation which must be carried out before a cumulative impact assessment can be published. The cumulative impact assessment must be reviewed at least every three years.

4.6 LATE NIGHT LEVY

The late night levy is a power, which enables Councils to charge a levy to persons who are licensed to sell alcohol late at night in the authority’s area, as a means of raising a contribution towards the costs of policing the late-night economy. Before implementing a late night levy, the Council must consider the costs of policing and other arrangements for the reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am, and the desirability of raising revenue via the levy. The Council must consult those who are likely to be affected, including by writing to licensees who may have to pay the proposed levy.

Presently the levy may only apply to premises selling alcohol and must apply to the whole of the Council’s area, but Councils may choose to apply exemptions and reductions (according to prescribed categories). The Council can decide the ‘late night supply period’ (the times at which the levy is

payable), which must begin at or after midnight and end at or before 6am, and must be the same every day.

The Government committed, in its Modern Crime Prevention Strategy, to improve the late night levy. The Act intends to give greater flexibility to local areas by allowing Councils to choose to impose the levy only in certain geographical areas of their licensing area. It also permits Councils to impose a levy on late night refreshment establishments. The police may ask a Council to make a proposal for a levy. This request must be supported by evidence, and both must be published by the Council.

5.0 REASONS FOR THE DECISION

To advise the Committee of the amendments to the Licensing Act 2003 contained in the Policing and Crime Act 2017.

6.0 ALTERNATIVE OPTIONS

None.

7.0 RELEVANT CONSIDERATIONS

None.

8.0 GLOSSARY

None.

9.0 LIST OF APPENDICIES

None.

10.0 BACKGROUND PAPERS

10.1 Policing and Crime Act 2017

10.2 Licensing Act 2003