

LICENSING AND SAFETY COMMITTEE

4 JULY 2017

AMENDMENTS TO THE LICENSING ACT 2003 DELEGATIONS TO THE LICENSING HEARING PANEL

Report from: Perry Holmes, Chief Legal Officer/Monitoring Officer

Author: Alison Poulson, Licensing and Local Land Charges
Manager

Summary

The purpose of this report is to inform the Committee of amendments to the Licensing Act 2003 as a result of the Policing and Crime Act 2017. The report seeks the Committee's agreement to the delegation of a specific function to the Licensing Hearing Panel concerning the suspension or revocation of Personal Licences issued by the Council as the Licensing Authority.

1. Budget and Policy Framework

- 1.1 Chapter 3, Part 2, paragraphs 8 and 8 (B) of the Council's Constitution specifies the functions of the Licensing and Safety Committee and the Licensing Hearing Panel respectively.
- 1.2 Under Article 14 of the Consitution, the Monitoring Officer has delegated authority to make minor changes to the Constitution, with a copy of such changes being supplied to all Group Leaders and Whips within 14 days. All other changes to the Constitution will only be approved by the Council after consideration of the proposal by the Monitoring Officer.

2. Background

- 2.1 Following the making of a Commencement Order for the Policing and Crime Act 2017, a number of changes to the Licensing Act 2003 (the 2003 Act) took effect on 6 April 2017.

Section 191 (1) - Meaning of alcohol

- 2.2 The definition now includes alcohol "in any state", to clarify that powdered or vaporised alcohol falls within the definition.

Section 53B - Interim steps pending review

- 2.3 When the Police apply for a summary review of a premises licence due to serious crime or disorder, a hearing must be held within 48 hours. At the hearing, the Licensing Hearing Panel may impose interim steps, such as temporary conditions on the licence or suspension of the licence, pending a full review hearing within 28 days after the day of receipt of the review application. The amended 2003 Act clarifies that the premises licence holder may only make representations against the interim steps once, unless there has been a material change of circumstances. A meeting of the Licensing Hearing Panel must be held to consider those representations within 48 hours.

Section 53D – Review of interim steps

- 2.4 This new section of the 2003 Act requires that a Licensing Hearing Panel considers the interim steps that were imposed at a summary review hearing, at the subsequent full review hearing. This is intended to remove the current uncertainty over whether the interim steps should remain in place until the full review decision takes effect, either after the 21 day appeal period or after an appeal has been heard. In future, Licensing Hearing Panels should always review the interim steps immediately after making a final decision on a premises licence review, to determine whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

Section 132A – Powers to revoke or suspend a personal licence

- 2.5 Previously, only the magistrates' court had the power to revoke or suspend a personal licence where the licence holder had been convicted of a relevant offence. The amended 2003 Act gives this power to licensing authorities for convictions received on or after 6 April 2017. When a licensing authority has granted the personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or has been required to pay an immigration penalty on or after this date, the authority has the discretionary power to revoke the licence or suspend it for a period of up to six months.
- 2.6 The amended 2003 Act adds the revocation or suspension of a personal licence by a local authority to the list of functions that may not be delegated to an officer. Therefore, it is requested that the Licensing and Safety Committee delegates this function to the Licensing Hearing Panel. The revised functions of the Panel, extracted from the Council's Constitution and amended to include this additional function, are attached at Appendix 1. If the Committee agrees to this delegation, the Monitoring Officer would implement the revision to the Council's Constitution, using his delegated authority to make minor changes to it.
- 2.7 New section 132A of the 2003 Act sets out the process that must be followed by the licensing authority to suspend or revoke a personal licence. This includes a requirement to give the licence holder 28 days to make representations. If the licensing authority, having considered all the information available to it, proposes not to revoke the licence, it must invite

the chief of police to make representations within a period of 14 days and must consider these representations before making a final decision on whether to revoke or suspend the licence. The licence holder then has 21 days to submit an appeal against the decision to the magistrates' court.

Schedule 4 – Addition of further relevant offences

2.8 Schedule 4 of the 2003 Act, as amended, includes additional relevant offences as follows:

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

3. Risk management

3.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

3.2 There is a risk that the Council may receive a legal challenge if the processes put in place for licensing matters do not comply with the relevant legislation.

4. Financial and legal implications

4.1 There are no financial implications arising from this report.

4.2 The Policing and Crime Act 2017 amends the Licensing Act 2003 and gives licensing authorities the power to revoke or suspend personal licences with effect from 6 April 2017. Revised Guidance issued under section 183 of the 2003 Act was published in April 2017.

4.3 All matters relating to the Licensing Act 2003 have been delegated by Full Council to the Licensing and Safety Committee.

4.4 Under Article 14 of the Constitution, the Monitoring Officer has delegated authority to make minor changes to the Constitution.

5. Recommendations

5.1 That the Licensing and Safety Committee:

- 5.1.1 notes the amendments to the Licensing Act 2003 as a result of the Policing and Crime Act 2017;
- 5.1.2 extends the functions of the Licensing Hearing Panel to include the power to suspend or revoke personal licences, as set out in Appendix 1; and
- 5.1.3 notes that the Monitoring Officer, who has delegated authority to make minor changes to the Council's Constitution, would then amend the Constitution to incorporate the additional function of the Licensing Hearing Panel.

Lead officer contact

Alison Poulson, Licensing and Local Land Charges Manager, Telephone: 01634 332774
Email: alison.poulson@medway.gov.uk

Appendices

Appendix 1 – Proposed amendment to the functions of the Licensing Hearing Panel.

Background papers

None

Proposed amendment to the functions of the Licensing Hearing Panel

Medway Council's Constitution – Chapter 3 – Responsibility for functions

(Additional function (xiii) in bold)

8. Licensing and Safety Committee

(B) Licensing Hearing Panel

- To consider all Licensing Act 2003 matters;
- With regard to Licensing Act 2003 matters, to determine:
 - (i) an application for a personal licence if there is a police objection;
 - (ii) an application for a personal licence with relevant unspent convictions;
 - (iii) an application for a premises licence/club premises certificate, if relevant representation made;
 - (iv) an application to vary a Designated Premises Supervisor, if there is a police objection;
 - (v) an application for provisional statement, if a relevant representation made;
 - (vi) an application to vary premises licence/club premises certificate, if a relevant representation made;
 - (vii) an application for a minor variation to a premises licence or club premises licence, if a relevant representation is made;
 - (viii) an application for transfer of premises licence, if there is a police objection;
 - (ix) applications for interim authorities, if there are police objections;
 - (x) an application to review premises licence/club premises certificate;
 - (xi) a decision to object when the local authority is a consultee and not the relevant authority considering the application;
 - (xii) a police objection to a temporary event notice.
- (xiii) whether to suspend, for a period of up to six months, or revoke a personal licence where a Personal Licence Holder has been convicted of a relevant offence or foreign offence, or has been required to pay an immigration penalty, on or after 6 April 2017.**

Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003.