

REPORT TO	ON
LICENSING COMMITTEE	19 SEPTEMBER 2017

Jan 2017



TITLE	AUTHOR
UPDATE ON AMENDMENTS TO THE LICENSING ACT 2003	PETER HAYWOOD

1. PURPOSE OF THE REPORT

1.1 The purpose of this report is to inform members of the implementation of amendments to the Licensing Act 2003

2. RECOMMENDATIONS

2.1 Members are requested to note the amendments to the Licensing Act 2003 as set out in the report below.

3. CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Clean, green and safe		Strong and healthy communities	
Strong South Ribble in the heart of prosperous Lancashire		Efficient, effective and exceptional council	x

4. BACKGROUND TO THE REPORT

4.1 The Policing and Crime 2017 (Commencement Number 1 and Transitional Provisions) Regulations 2017 were made on 13 March 2017 and bring into effect a number of provisions within the Policing and Crime Act 2017 ("2017 Act") from 6 April 2017. These provisions amend 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.

4.2 The detail relating to each of these issues is set out in the relevant sections below.

5. DEFINITION OF ALCOHOL (SECTION 135 OF THE POLICING AND CRIME ACT 2017)

5.1 The Licensing Act 2003 defines alcohol as "spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor". Section 135 of the Policing and Crime Act 2017 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 (i) powdered and (ii) vaporised alcohol fall within the regulatory regime provided for in that Act.

Powdered alcohol:

- 5.2 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). It is lighter than traditional alcoholic drinks and its manufacturers claim that it will therefore be of benefit to airlines, persons on camping holidays etc.

Vaporised alcohol:

- 5.3 Vaporised alcohol is alcohol in the form of a vapour which can be inhaled either (i) straight from the air into which the vapour is pumped or (ii) by using an inhalation device.
- 5.4 Alcohol can be vaporised in various ways, eg by pouring it over dry ice in a narrow container or by using a simple container and open-flame heater. It can then be inhaled with a straw (a picture illustrating the practice is attached as Appendix 1) or by using another device such as an asthma nebulizer). A further method is to pour alcohol in a corked bottle with a pipe, and then use a bicycle pump to make a spray.
- 5.5 Vaporised alcohol is currently available in the UK, and is understood to be supplied in nightclubs in cities such as Manchester.

6. SUMMARY REVIEWS (SECTIONS 136 AND 137 OF THE POLICING AND CRIME ACT 2017)

- 6.1 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 in the form of 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; precautionary steps can be taken immediately without the authority 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.
- 6.2 However, should the licensing authority impose interim steps under Section 53B, the premises licence holder is then 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.
- 6.3 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. An example of a material change would be where the licensee has employed additional door staff or increased security at the premises (which may 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.

6.4 Furthermore, there has been 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. This position has now been clarified by section 137 of the 2017 Act, which 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:

- the time or 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).

6.8 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.

7. SUSPENSION / REVOCATION OF PERSONAL LICENCES (SECTION 138 OF THE POLICING AND CRIME ACT 2017)

7.1 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.

7.2 The definition of a "relevant offence" has included criminal offences under:

- Licensing legislation;
- Theft;
- Production, possession or supply of a controlled drug; and
- Driving under the influence of drink or drugs.

However, this has now been widened – see section 8 below.

7.3 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. However, the licensing authority has not had the ability to suspend or revoke the licence; nor has there been 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.

7.3 Section 138 amends the 2003 Act to give licensing authorities the power to revoke or suspend a personal 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 subcommittee.

8. ADDITION OF FURTHER RELEVANT OFFENCES (SECTION 139 OF THE POLICING AND CRIME ACT 2017)

8.1 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.

9. GUIDANCE (SECTION 140 OF THE POLICING AND CRIME ACT 2017)

9.1 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.

10. WIDER IMPLICATIONS AND BACKGROUND DOCUMENTATION

10.1 Comments of the Statutory Finance Officer

There are no financial implications arising as a result of this report.

10.2 Comments of the Monitoring Officer

The amendments made by the Policing and Crime Act 2017 to the Licensing Act 2003 will provide additional powers to the Licensing Authority. The amendments have also clarified ambiguities in the law in respect of the time period during which interim steps will have effect.

<p>Other implications:</p> <ul style="list-style-type: none"> • Risk • Equality • HR 	<p>Risk - Improved public safety will enhance the Council's reputation Equality – none HR - none</p>
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11. BACKGROUND DOCUMENTS (or there are no background papers to this report)

Appendix 1 – photo – vaporised alcohol