

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 27th June 2017

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PART I **INFORMATION, COMMENT & DECISION**

AMENDMENTS TO THE LICENSING ACT 2003 BY THE POLICING AND CRIME ACT 2017 AND THE IMMIGRATION ACT 2016.

1. **Purpose of Report**

To update the Licensing Committee on changes to the Licensing Act 2003 and associated legislation through amendments by the Policing and Crime Act 2017 and the Immigration Act 2016, to prevent illegal working and improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.

2. **Recommendation(s)/Proposed Action**

The Committee is requested to:

- (a) Note the amendments to the Licensing Act 2003;
- (b) Note the provisions for the Secretary of State to provide Statutory Guidance on Protecting Children and Vulnerable Adults, and
- (c) Approve the amended Delegations of the Licensing Committee with regard to the Licensing Act 2003.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

The report outlines in full the amendments to the Licensing Act 2003 by both the Immigration Act 2016 and the Policing and Crime Act 2017 that came in effect on 6th April 2017.

The Immigration Act 2016 provides new measures to ensure that certain licence holders for the sale of alcohol and late night refreshment have the correct legal entitlement to obtain a licence and to work in licensed premises with the additional priority to prevent illegal working in licensed premises or to hold a personal licence.

The amendments to the Licensing Act 2003 by the Policing and Crime Act 2017 clarify the law on summary reviews of premises licences, grant licensing authorities powers to revoke or suspend personal licences when the holder is convicted of a relevant offence, add further offences to the list of relevant offences and amend the definition of alcohol to include powdered and vaporised alcohol. This will ensure that the police and other law enforcement agencies as well as licensing authorities have the

powers they need to prevent, detect and investigate crime, and improve the effectiveness of the alcohol regime in preventing crime and disorder.

3a. **Slough Joint Wellbeing Strategy Priorities**

The amendments to the Licensing Act 2003 provides licensing authorities with new powers to prevent illegal working in licensed premises as well as powers to revoke or suspend a Personal Licence where the licence holder has been convicted of a relevant, foreign offence or an immigration offence or immigration penalty.

The Secretary of State for the Home Office (Immigration) as a responsible Authority can now also make objections to a personal licence being granted, ask for conditions to be imposed on a premises licence as well as requesting a review of a premises licence.

The amendments will contribute to the Slough Joint Wellbeing Strategy priority of:

1. Protecting vulnerable children.

3b. **Five Year Plan Outcomes**

The amendments to the Licensing Act 2003 will contribute to the Five Year Plan with the specific outcomes of:

- Our children and young people will have the best start in life and opportunities to give them positive lives.
- Slough will be an attractive place where people choose to live, work and visit.
- Slough will attract, retain and grow businesses and investment to provide jobs and opportunities for our residents.

4. **Other Implications**

(a) Financial

There are no financial implications involved in the proposed act.

(b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
As detailed in section 2 above	None – All new provisions and requirements are set down in statute.	The amendments now ensure that only those persons with the correct legal entitlement to work can work in licensed premises, as well as providing the Licensing Authority with powers to revoke or suspend a Personal Licence where the licence holder has been convicted of specific offence as laid down in statute.

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(d) Equalities Impact Assessment

An Equality Impact Assessment has not been completed as all the new provisions/requirements are laid down in statutory, and therefore there is no negative or adverse impact on any individual or any equality group.

5. Supporting Information

5.1 Immigration Act 2016

5.2 The Licensing Act 2003 (the 2003 Act) sets out the licensing regime for the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment in England and Wales. Section 36 of, and Schedule 4 to the Immigration Act 2016 (the 2016 Act) amends the 2003 Act and introduces immigration safeguards in respect of licensing applications made in England or Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

5.3 The guidance for local authorities issued by the Home Office emphasises that the statutory prevention of crime objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises. Licensing authorities should work with the Home Office (Immigration Enforcement) as well as the police, in respect of these matters.

5.4 In summary the new immigration measures are:

- Premises licences to sell alcohol or provide late night refreshment and personal licences cannot be issued to an individual who does not have permission to be in the UK, or is not entitled to undertake work relating to the carrying on of a licensable activity;
- Licences issued to those with limited permission to be in the UK will lapse when their permission to be in the UK and work in a licensable activity comes to an end;
- Immigration offences, including civil penalties, become ‘relevant offences’ as defined by the 2003 Act;
- The Home Secretary (in practice Home Office (Immigration Enforcement)) is added to the list of responsible authorities in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence

applications (except regulated entertainment only licences), and in some limited circumstances personal licence applications, and permits Home Office (Immigration Enforcement) to make appropriate representations and objections to the grant of a licence; and

- Immigration officers are permitted to enter premises which they have reason to believe are being used to sell alcohol or provide late night refreshment, to investigate whether immigration offences are being committed in connection with the licensable activity.

5.5 The new provisions apply to the following types of application on or after 6th April 2017:

- A new application for a premises licence for alcohol and late night refreshment
- An application to vary a premises licence for alcohol and late night refreshment
- Application for the transfer of a premises
- Applications for minor variations - *considered by the licensing authority to require consultation with the Home Office.*
- An Interim Authority, and
- Application for a new Personal Licence

Premises Licence

5.6 In addition The Secretary of State (Home Office) becomes a responsible authority within the definition of the 2003 Act. This will allow the Immigration Service to make representations against the grant or variation of a premises licence application. An applicant applying for a new premises licence, transfer of an existing licence or service of an interim notice not only has to be over the age of 18, but will also have to hold leave to work in the United Kingdom. In a hearing convened due to the Secretary of State's objection, the Licensing Authority must reject the application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

5.7 Under the current framework, a premises licence will lapse on the death, incapacity or insolvency of a premises licence holder. The premises licence will now also lapse if the licence holder ceases to be entitled to work in the United Kingdom.

Personal Licence

5.8.1 An applicant will not be able to apply for a personal licence if he or she is not entitled to work in the United Kingdom.

5.8.2 An existing personal licence will lapse if an individual ceases to be entitled to work in the UK or becomes resident without being entitled to work. The list of 'relevant and foreign offences' in relation to personal licences has been expanded to include 'immigration offences and immigration penalties' (see point 6.17 below). The Secretary of State must consider such offences when determining whether the grant of a personal licence would be prejudicial to the prevention of

illegal working in licensed premises.

- 5.8.3 The requirements to demonstrate immigration status are not retrospective, so there is no need to check the immigration status of individuals with licences issued before 6 April 2017.

Right of Entry to Licensed Premises

- 5.9 Section 179 of the Licensing Act 2003 in relation to rights of entry to investigate licensable activities, has been amended by the 2016 Act, so that where an immigration officer has reason to believe that any premises is being used for the sale of alcohol or provision of late night refreshment, the officer may enter the premises without a warrant, with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of these licensable activities.
- 5.10 Immigration officers, like police officers, are not authorised persons within the 2003 Act, but they are separately empowered by the Act to carry out their duties. The effect is to facilitate joint enforcement operations with licensing enforcement officers, and other bodies that inspect workplaces for compliance. The power of entry may also be used by Immigration, Compliance and Enforcement (ICE) teams operating on their own, to investigate illegal working following receipt of intelligence on premises they have reason to believe are being used for a licensable activity.

6. Policing and Crime Act 2017

6.1 Taxi and Private Hire Licensing – Statutory Guidance on Protecting Children and Vulnerable Adults.

- 6.2 Section 177 of the 2017 Act provides that the Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm. The Secretary of State is also empowered to revise any guidance and must publish any guidance or revision of it.
- 6.3 Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section. Before issuing the guidance, the Secretary of State must consult with a wide range of stakeholders including the police, licensing authorities and representatives of taxi and private hire licence holders. Section 177 was commenced on Royal Assent and it is anticipated that the Secretary of State will begin consultation on the draft guidance in due course.

Licensing Act

- 6.4 The Policing and Crime Act 2017 took effect as of 6th April 2017 and makes a number of amendments to the Licensing Act 2003 as detailed below:
- 6.5 The changes to the Licensing regime, detailed below, are contained within the Policing and Crime Act 2017, with the aim to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.

Meaning of “alcohol”

- 6.6 Section 191 of the 2003 Act defines alcohol as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. This is amended by Section 135 of the 2017 Act to include alcohol in any state, so as to clarify that powdered alcohol and vaporised alcohol are to be regulated in the same way as liquid alcohol.

Interim steps pending review: representations

- 6.7 Section 53A of the 2003 Act provides for the police to make an application for a summary review of a premises licence, if the relevant premises are associated with serious crime or serious disorder. The licensing authority must consider the application within 48 hours and impose ‘interim steps’ (temporary conditions) if necessary.
- 6.8 When a licensing authority considers an application for a summary review, it may take interim steps without first giving the holder of the premises licence an opportunity to make representations. This is because in instances of serious crime and serious disorder it may be necessary to take immediate action in order to protect the public. Section 53B of the 2003 Act allows the licence holder to make representations after the interim steps have been taken, and then requires the licensing authority to hold another hearing to consider those representations within 48 hours. The 2003 Act does not limit the number of times that a premises licence holder may make representations, with the result that the licensing authority must hold a hearing each time that relevant representations are received.
- 6.9 Section 53B is amended by Section 136 of the 2017 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.

Summary reviews of premises licences: review of interim steps

- 6.10 Further to the above measure, Section 53A requires the review of the premises licence to take place within 28 days of receipt of the application. The review takes the form of a hearing at which the licensing authority will determine what action should be taken on a permanent basis.
- 6.11 The decision made at the review hearing does not take effect until the expiry of the time limit for appealing (21 days) during which the decision may be appealed by the licensee or the police to a magistrates’ court, or until an appeal is disposed of. There is currently an ambiguity in the 2003 Act about whether the interim steps remain in place after the review hearing, and whether they can be withdrawn or amended by the licensing authority. The amendments made by this clause will address the ambiguity about what happens to the interim steps between the review hearing and the review decision coming into effect.
- 6.12 Section 53 is amended by Section 137 of the 2017 Act, requiring the licensing authority, at the review hearing, to review any interim steps that have been taken. The licensing authority 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.

- 6.13 Finally Part 1 of Schedule 5 to the 2003 Act is amended to provide 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 made to the magistrates court within 28 days of the date of the decision.

Personal licences: licensing authority powers in relation to convictions

- 6.14 Currently a personal licence may be suspended or forfeited by a court on conviction for a relevant offence (that is, one listed in Schedule 4 to the 2003 Act). Section 138 of the 2017 Act now provides licensing authorities with a similar discretionary power. When the licensing authority that has granted a personal licence becomes aware that the licence holder has been convicted of a relevant offence, foreign offence or has been required to pay an immigration penalty, the licensing authority **may** revoke the licence, or suspend it for a period of up to six months.
- 6.15 Notice must be given to the licence holder where licensing authority is considering to revoke or suspend the personal licence, who must be given the opportunity to make representations to a Licensing Sub-Committee, and will have the right of appeal to a magistrates court.
- 6.16 The new provisions of the 2017 Act state that a decision to revoke or suspend a personal licence cannot be made by officers and must be a made by a Licensing Committee. Therefore the Delegations need to be amended and approved to take account of the new function, as detailed in **Appendix A**.

A overview of the procedure when consideration is being given to revoke or suspend a personal licence is detailed in **Appendix B**.

Licensing Act 2003 – Addition of further Relevant Offences.

- 6.17 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 2017 Act:
- 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;
 - The terrorism-related offences listed in section 41 of the Counter-terrorism Act 2008; and
 - Immigration offence or immigration penalties.

Licensing Act 2003: guidance

- 6.18 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 removes the parliamentary procedure and the guidance will now take effect as soon as it is published by the Home Office.

Cumulative Impact Assessments Policies

- 6.19 Cumulative Impact Assessment Policies (CIPs) are not referred to in 2003 Act. They are discussed in Home Office guidance (March 2015) issued under section 182 of the Act where “cumulative impact” means “the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area”. Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. This statement can, following consultation, include a CIA, the aim of which is to limit the growth of licensed premises where the promotion of the licensing objectives is being compromised.
- 6.20 Section 5 of the 2003 Act is amended by Section 141 of the 2017 Act, allowing a licensing authority to publish a cumulative impact assessment policy if it considers that the number of licensed premises in an area is such that granting further licences would be inconsistent with its duty to promote the licensing objectives. The licensing authority will have to publish the evidence for its opinion and consult the list of persons set out in the 2003 Act. A cumulative impact assessment would not prevent the grant or variation of a licence. A responsible authority or other person would need to make a representation to challenge an application. If no representations were made, the licensing authority would have to grant the licence or variation. Under the amendment the licensing authority must now review the evidence supporting a CIP at least every three years instead of the previous requirement of 5 years.

Late Night Levy

- 6.21 The Late Night Levy (LNL) was introduced under the Police Reform and Social Responsibility Act 2011 to enable licensing authorities to collect a financial contribution from businesses selling alcohol late at night and to put the funds raised towards policing and other costs associated with the management of the night time economy.
- 6.22 Currently the legislation requires that at least 70% of the net revenue from the levy (minus administration costs) must go to the Police and Crime Commissioner (PCC) who then determines how to direct the funds.
- 6.23 The legislation requires that if implemented, the LNL must apply to the entire licensing authority area (subject to exemptions). Licensing authorities have discretion to make exemptions for New Year’s Eve and for certain categories of premises such as bingo halls, community premises, country village pubs and businesses that already contribute financially as part of a Business Improvement District (BID).
- 6.24 The LNL has not been widely implemented and has been subject to criticism from police, licensing authorities and the licensed trade.
- 6.25 The police and licensed trade have indicated that the LNL in its current form is inflexible and licensing authorities feel that they are not able to target businesses that place demands on the police in the night time economy. This is reported to be

one of the major reasons why very few LNLs have been introduced. The licensed trade has also raised concerns around the lack of transparency in how LNL revenue is spent. The PCC working group on alcohol has stated that PCCs do not feel they have a strong enough role in consideration of a levy in their area.

- 6.26 Section 142 and Schedule 18 of the Policing and Crime Act 2017 seek to make the LNL more flexible, allowing authorities to introduce the LNL in for example specific parts of a town rather than having to introduce it for the whole of the local authority area as is the case currently.
- 6.27 There will be greater transparency, however, with licensing authorities being required to publish information on how the funds raised by the LNL are spent.
- 6.28 One of the key changes is that the LNL will be extended to also apply to premises that are permitted to offer late night refreshment, for example takeaways (the LNL currently only applies to premises selling alcohol). Premises only serving hot Non-alcoholic drinks are excluded.
- 6.29 PCCs will also be given a statutory right to request that consideration is given by a licensing authority to implementing a LNL in their area. Such a request must be then given consideration by the licensing authority and the response to the request must be published. This published response must include reasons, including an explanation of the outcome of the authority's considerations

7. Comments of Other Committees

'1' 23rd March 2016, Information Report to the Licensing Committee on the Immigration Bill 2015. Resolved- That the amendments to the Immigration Bill 2015 relating to new licensing powers and additional responsibilities be noted.

8. Conclusion

The Committee are therefore requested to note the details of the report and recommendations set out in Paragraph 2.

9. Appendices Attached

'A' - Delegation of Function of the Licensing Act 2003
'B' - Draft procedure for consideration of suspending or revoking a personal Licence

10. Background Papers

'1' - Licensing Act 2003
'2' - Policing and Crime Act 2017
'3' - Immigration Act 2016
'4' - Explanatory notes of The Policing and Crime Act 2017
'5' - Explanatory notes of the Immigration Act 2016
'6' - Home Office – 'Guidance for Licensing Authorities to prevent illegal working in licensed premises in England and Wales'

Appendix A

Licensing Act 2003 - Delegation of Functions (2017)

The delegations of functions in relation to licensing matters are as follows:-

Matters to be dealt with	Sub Committee	Officers
Application for personal licence	If a representation made	If no representation 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
Minor variations		All cases
Application to vary designated personal licence holder	If a Police representation	All other cases
Request to be removed as designated personal licence holder		All cases
Application for transfer of premises licence	If a Police representation	All other cases
Applications for Interim Authorities	If a Police representation	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 on objection when Local Authority is a consultee and not the lead authority	All cases	
Determination of a 'Relevant Persons' representation to a temporary event notice (Standard notice only)	All cases	

Making a representation on behalf of the Licensing Authority		Licensing Manager Senior Licensing Officer
Initiating a Review on behalf of the Licensing Authority		Licensing Manager Senior Licensing Officer
Determination of a representation made on behalf of the Licensing Authority	All cases	
Determination of a Review made on behalf of the Licensing Authority	All cases	
Service notice on a Personal Licence holder in consideration to suspend or revoke the Personal Licence		Licensing Manager Senior Licensing Officer
Decision to suspend or revoke a Personal Licence where the holder has been convicted of a relevant offence, foreign offence or required to pay an immigration penalty.	All Cases	

APPENDIX B

(Procedure)

The following procedure must be followed where consideration is to be given to revoke a personal licence or suspend a personal licence (for period of up to six months), where the licence holder has been convicted of a relevant offence, foreign offence, immigration offence or been required to pay an immigration penalty.

1. Written notice must be given to the licence holder that the licensing authority is considering revoking or suspending the personal licence. The notice must detail fully the relevant offence, foreign offence, immigration offence or immigration penalty. *(This power has been delegated to the Licensing Manager and Senior Licensing Officers.)*
2. The notice must invite the licence holder to make representations regarding;
 - (a) The relevant offence, foreign offence or immigration penalty that has caused the licensing authority to issue the notice,
 - (b) Any decision of a court under section 129 or 130 in relation to the licence, (i.e. court powers to make a forfeiture order or suspend the licence for period up to six months).
 - (c) Any other relevant information (including information regarding the licence holder's personal circumstances).
3. Any relevant representations must be made to the licensing authority within a period of 28 days, beginning with the day the notice was issued.
4. Once relevant representations have been received, or if no relevant representations have been received, arrangements must be made for a Licensing Sub-Committee to be convened to consider the revocation or suspension of the personal licence and to hear any representations made by the licence holder.
5. Before deciding whether to suspend or revoke the licence, the licensing authority must take into account;
 - (a) Any representations made by the licence holder,
 - (b) Any decision of a court under section 129 or 130 of which the licensing authority is aware of, and
 - (c) Any other information which the licensing authority consider relevant.
6. Having taken into account the matters detailed in (5) above the licensing authority may make a decision whether to suspend or revoke the personal licence.
7. If a decision is made to revoke to the licence, the personal licence holder may appeal against the decision to the Magistrates court.

8. If a decision is made to suspend the licence, the licensing authority must:
 - (a) Give notice to the Chief Officer of Police that it proposes not to revoke the licence, and
 - (b) Invite the Police to make representations regarding the issue of whether the licence should be suspended or revoked having regard to the Crime Prevention objective.
9. The Chief Officer of Police may make representations to the licensing authority within the period of 14 days beginning with the day the notice was received.
10. If the Chief Officer of Police **does not** make representations then the licence holder must be served notice of the date of the suspension taking effect.
11. Where the licensing authority has given notice to the Chief Officer of Police and representations have been made, the authority must take then take into account;
 - (a) Any representations from the Police, and
 - (b) The matters described in section (5) above,
12. Having received representations from the Chief Officer of Police to the decision to suspend the licence, then the Licensing Sub-Committee hearing will have to be reconvened for the Police to attend to present those representations orally and for the licence holder to also attend to make comment.
13. The Licensing Sub-Committee must then make a decision whether to suspend or revoke the licence.
14. The licensing authority must give notice of any decision made to suspend or revoke the licence to the licence holder and the Chief Officer of Police, detailing fully the reasons for the decision.
15. The licence holder has the right of appeal against the decision of the licensing authority to revoke or suspend the personal licence. The appeal must be made to the Magistrates Court within a period of 21 days from the date of receipt of service of the notice.