

Policing and Crime Act 2017

Provisions Affecting Licensing Functions

Taxi and Private Hire Licensing

Statutory Guidance on Protecting Children and Vulnerable Adults

Section 177 of the 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 this guidance and must publish any guidance or revision of it.

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 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177 was commenced on Royal Assent and it is anticipated that the Secretary of State will begin consultation on the draft guidance shortly.

Alcohol, Entertainment and Late Night Refreshment Licensing

Meaning of “alcohol”: inclusion of alcohol in any state

Section 135 amends the definition of “alcohol” provided in the Licensing Act 2003 to include alcohol “in any state.” This will mean powdered and vapourised alcohol will also be regulated under the Licensing Act 2003.

Summary reviews: representations against interim steps

A summary review is a “fast-track” licence review process that can be applied for by the Police in the case where a licensed premises is associated with serious crime and disorder.

Within 48 hours of receipt of a summary review application, the licensing authority must decide what interim steps, if any, to take pending the full review hearing, which must take place within 28 days.

Once the interim steps have been decided, a licence holder can make representations against the interim steps and the licensing authority then has to hold a hearing to consider these representations within 48 hours.

Currently there is no limit on the number of times a licence holder can make representations against the interim steps during the period before the full review hearing takes place.

This means that the licensing authority could have to hold a hearing every 48 hours if a licence holder made repeated representations against the interim steps imposed by the licensing authority.

Section 136 of the Policing and Crime Act 2017 puts in place a restriction so that licence holders will only be able to make further representations after their initial representations have been considered, if there has been a material change in circumstances since the consideration hearing.

Summary reviews of premises licences: review of the interim steps

Following receipt of an application for a summary review, the hearing to review the premises licence must take place within 28 days of receipt of the application. The decision taken at the review hearing only comes into effect once the time limit for appealing (21 days) has expired or any appeal has been disposed of.

There is ambiguity in the 2003 Act about whether the interim steps remain in place during this period. This has resulted in licensed premises, closed due to serious problems, re-opening pending the outcome of an appeal.

There has been confusion for some time about the status of the interim steps imposed by the licensing authority after the full review hearing has taken place.

Section 137 of the Act will amend the Licensing Act 2003 so as to require the licensing authority to determine at the review hearing what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making an appeal. These arrangements will allow licensing authorities and the police to take effective enforcement action, and will be fairer for businesses. Licensees and the police will be able to appeal the interim steps to a magistrates' court.

Personal licences: licensing authority powers in relation to convictions

Currently a personal licence may be suspended or forfeited by a court on conviction of a relevant offence. Relevant offences are listed in Schedule 4 to the 2003 Act and include violent and sexual offences, drugs offences and firearms offences. However, the evidence suggests that the courts are not routinely exercising their powers in this regard, often because they are not aware that an offender holds a personal licence.

Section 138 will allow licensing authorities to suspend or revoke a licence. Courts will retain their existing powers. Where a licensing authority decides to suspend or revoke a licence, the licence holder will have the opportunity to make representations to the licensing committee, and will have a right to appeal to a magistrates' court.

Licensing Act 2003: addition of further relevant offences

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:

- 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; and
- the terrorism-related offences listed in section 41 of the Counter-terrorism Act 2008.

Licensing Act 2003: guidance

Section 182 of the 2003 Act requires the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act, and that the guidance be laid before Parliament and be subject to the negative resolution procedure every time it is updated. The licensing framework has been in place for ten years, and in that time changes to the guidance have not been subject to parliamentary debate. The requirement to lay revised guidance before Parliament is therefore considered unnecessary and at odds with many other statutory guidance provisions.

As a result of section 140 of the Policing and Crime Act 2017, the Secretary of State will no longer have to lay the s.182 guidance before Parliament for approval before it comes into effect.

Cumulative Impact Policies

Cumulative Impact Policies (CIPs) allow licensing authorities to limit the number or type of licence applications (e.g. bars or off-licences) granted in areas where they can demonstrate that the number or density of premises in that area is adversely impacting on the statutory licensing objectives under the Licensing Act 2003.

There are currently over 200 CIPs in place but they have no statutory basis. Not all licensing authorities are making effective or consistent use of CIPs and the licensed trade has concerns about the transparency of the process and quality of evidence used to restrict new businesses.

Section 141 of the Policing and Crime Act 2017 will amend the Licensing Act 2003 and put CIPs on a statutory footing while introducing a requirement on licensing authorities to review the evidence on which CIPs are based at least every three years - more frequently than under the current system, where the SOLP review determines that the evidence for CIPs will be examined at least once every five years.

Late night levy requirements

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.

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.

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 Years 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).

The LNL has not been widely implemented and has been subject to criticism from police, licensing authorities and the licensed trade.

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.

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.

There will be greater transparency, however, with licensing authorities being required to publish information on how the funds raised by the LNL are spent.

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.

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.