

 Licensing and Regulatory Committee: 19 February 2018		Agenda Item No. 4
Title	Revisions to the Scheme of Delegation - with regard to Personal Licence Holders	
For further information about this report please contact	Emma Dudgeon, Licensing Enforcement Officer, Health and Community Protection. Tel: 01926 456113 Emma.dudgeon@warwickdc.gov.uk	
Wards of the District directly affected	All wards	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	None	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality Impact Assessment Undertaken	No

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	9.2.2018	Andrew Jones
Head of Service	9.2.2018	Marianne Rolfe
CMT		
Section 151 Officer	9.2.2018	Mike Snow
Monitoring Officer	9.2.2018	Andrew Jones
Finance	9.2.2018	Jenny Clayton
Portfolio Holder(s)	9.2.2018	Councillor Andrew Thompson
Consultation & Community Engagement		
WCC Legal Services Democratic Service Manager and Deputy Monitoring Officer		
Final Decision?		No
Suggested next steps: If supported the amendments will be considered by Executive Committee on 7 March 2018		

1. **Summary**

- 1.1 The purpose of this report is to advise Members of the Licensing and Regulatory Committee of the proposed changes to the Scheme of Delegation within the Constitution in relation to the suspension and revocation of a Personal Licences issued under The Licensing Act 2003.

2. **Recommendation**

- 2.1 That the Licensing and Regulatory Committee supports the proposals to amend the Scheme of Delegation under Health and Community Protection to include *'To notify the licence holder of the intention to refer them to a Licensing Sub-Committee to consider whether to suspend or revoke their Personal Licence under The Licensing Act 2003 and refer all cases to a Licensing Sub-Committee.'*
- 2.2 That the Licensing and Regulatory Committee, subject to agreement by the Executive/Council, approve the delegation of the decision to suspend or revoke a Personal Licence when a licence holder has been convicted before the court of a relevant offence, immigration offence or an immigration fine to a Licensing Sub-Committee.
- 2.3 The Licensing & Regulatory Committee determines that if Council approves these revisions, that the work involved in relation to 2.2 shall be delegated to their Sub-Committees as the appropriate body to consider such matters

3. **Reasons for the Recommendation**

- 3.1 On 6 April 2017 the Policing and Crime Act 2017 inserted Section 132A into the Licensing Act 2003 to give Licensing Authorities the power to revoke or suspend a Personal Licence if they become aware that the holder of the licence has been at any time before or after the grant of the licence, convicted of a relevant or foreign offence or been required to pay an immigration penalty.
- 3.2 A list of relevant offences has been provided by the Government and these are attached as appendix 1. A foreign offence is any offence for which a person has been convicted in a court of law of another country. If an offence is committed which is not a relevant offence or foreign offence the Licensing Authority have no powers.
- 3.3 Before the amendment made under the Policing and Crime Act 2017 came into force only a Magistrates Court had the power to revoke a Personal Licence at the time of sentencing for a relevant offence. However, it was the licence holders responsibility to make the Magistrates Court aware that they held a Personal Licence.
- 3.4 As a result of the amendment when the Licensing Authority becomes aware of an offence, officers must notify the personal licence holder that they intend to refer them to a Licensing Sub-Committee to consider whether to revoke or suspend their Personal Licence. The licence holder must be given 28 days to make representations to the Licensing Authority.
- 3.5 If the Scheme of Delegation amendment is agreed, the Licensing and Regulatory Sub-Committee would have the powers to make the decision to revoke or suspend a Personal Licence or to do nothing.

- 3.6 If the Licensing and Regulatory Sub-Committee decide not to revoke or suspend a Personal Licence the Chief Officer of Police is given 14 days to make a representation. If a representation is received a further Committee must convene to decide if having received the new information the personal licence should be revoked or suspended.
- 3.7 In line with other decisions under the Licensing Act the Personal Licence holder would have 21 days to appeal a decision to revoke or suspend a Personal Licence to the Magistrates Court.
- 3.8 The Policing and Crime Act 2017 does not set out any hearing procedures for determining whether or not to suspend or revoke Personal Licences. The Section 182 Guidance issued by the Secretary of State specifies at paragraph 4.45 that a Licensing Committee or Sub-Committee should determine the application to revoke a Personal Licence. It does not specify whether or not a hearing needs to take place.
- 3.9 S7(1) of the Licensing Act 2003 empowers a Licensing Committee to determine the decision making procedures for applications under the Licensing Act 2003. It is therefore open to the Licensing and Regulatory Committee to elect to dispose of these hearings by Licensing and Regulatory Committee or a Sub-Committee.
- 3.10 Officers are recommending that these be heard by a Sub-Committee. The Licensing Authority must also take into account the cost of holding the hearings and as there is no legal onus on the Licensing Authority to convene the whole Licensing and Regulatory Panel this should be considered. This would also fall into line with the current policy for hearing Personal Licence applications where Warwickshire Police have made objections. These are currently heard by a Licensing Sub-Committee.
- 3.11 It is proposed that for the first 12 months all Personal Licence holders who receive a relevant conviction, immigration conviction or an immigration fine will be brought before one of the Licensing and Regulatory Committees Sub-Committee. After 12 months a review will take place to establish if all relevant offences must still be taken to a Sub-Committee.

4. **Policy Framework**

4.1 **Fit for the Future (FFF)**

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/productivity of local economy Increased employment and income levels
Impacts of Proposal		
None	The licensing policy recognises that residents within, and visitors to the District, need a safe environment to live, work and visit; and that safe and well run entertainment premises are important to the wellbeing of any person within the District.	None
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
Impacts of Proposal		
None	None	None

4.2 **Supporting Strategies**

- 4.3 The proposal is not intended to bring forward changes to any of the principle formal policies of the Council but rather is intended to update the Scheme of Delegation in support of some of those policies.

- 4.4 **Impact Assessments** – An impact assessment taking into account the change in the Licensing Act 2003 would have been conducted by the Government before implementation which the Council is obliged to act upon. The Licensing Sub-Committees will be obliged to consider each matter on its individual merits.

5. Budgetary Framework

- 5.1 The recommendations do not impact on the budgetary framework or the budget set for the Council. Costs for the administration of this function are covered within the budget of the Council.

6. Risks

- 6.1 If the Licensing and Regulatory Sub-Committee make the decision to suspend or revoke a Personal Licence the decision may be appealed against at a Magistrates Court within 21 days of the decision. There would be costs associated with responding to an appeal and the Council could be ordered to pay the Appellants costs if it is deemed to have behaved unreasonably. These costs can be mitigated by providing Members of the Licensing Committee with ongoing training.

7. Alternative Option Considered

- 7.1 If the Scheme of Delegation is not amended the Licensing Authority will have no powers to revoke or suspend a Personal Licence. This could mean that persons who have committed relevant offences could continue to hold a Personal Licence with Warwick District Council.
- 7.2 The Committee may decide that the decision to suspend or revoke a Personal Licence should be made by the Licensing and Regulatory Committee but this is not recommended for the reasons set out in section 3 of the report.

8. Background

- 8.1 A Personal Licence is issued under the Licensing Act 2003 to any person who wishes to be a Designated Premises Supervisor at a licensed premises anywhere in England or Wales.
- 8.2 A Designated Premises Supervisor is the person who is responsible for the sale of alcohol at a premises and ideally has control over the day to day running of the premises. This is the person who the Licensing Department would deal with in the event of any complaints or issues at a licensed premises.
- 8.3 A Personal Licence must be applied for to the Council where the applicant usually resides. When applying for a Personal Licence a basic disclosure must be produced and any relevant offences must be declared. If the applicant has relevant offences Warwickshire Police are consulted and have 14 day to object to a personal licence being issued. If an objections is received a Licensing Sub-Committee will make a decision at the whether the Personal Licence may be issued.
- 8.4 Once a Personal Licence is issued the holder can keep this for an indefinite time, but must notify the Licensing Department of change of name, change of address and of any relevant convictions they receive.
- 8.5 There is currently no national database holding Personal Licence Holders details.

Appendix 1 - List of relevant offences issued under The Licensing Act 2003.

Attempted / conspiracy offences

- 1.**An offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence that is a relevant offence.
- 2.**An offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit an offence that is a relevant offence.

Copyright and trademark offences

- 3.**An offence under section 1 of the Trade Descriptions Act 1968 (false trade description of goods) in circumstances where the goods in question are or include alcohol.
- 4.**An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 —
 - (a) section 107(1)(d)(iii)(public exhibition in the course of a business of article infringing copyright);
 - (b) section 107(3)(infringement of copyright by public performance of work etc.);
 - (c) section 198(2)(broadcast etc. of recording of performance made without sufficient consent);
 - (d) section 297(1)(fraudulent reception of transmission);
 - (e) section 297A(1)(supply etc. of unauthorised decoder).
- 5.**An offence under either of the following provisions of the Food Safety Act 1990 in circumstances where the food in question is or includes alcohol—
 - (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
 - (b) section 15 (falsely describing or presenting food or drink).
- 6.**An offence under section 92(1) or (2) of the Trade Marks Act 1994 (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.
- 7.**An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.
- 8.**An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.

Drugs and drink/drug-driving offences

- 9.**An offence under any of the following provisions of the Misuse of Drugs Act 1971 —
 - (a) section 4(2)(production of a controlled drug);
 - (b) section 4(3)(supply of a controlled drug);
 - (c) section 5(3)(possession of a controlled drug with intent to supply);
 - (d) section 8 (permitting activities to take place on premises).
- 10.**An offence under any of the following provisions of the Psychoactive Substances Act 2016—
 - (a) section 4 (producing a psychoactive substance);
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
 - (c) section 7 (possession of psychoactive substance with intent to supply);
 - (d) section 8 (importing or exporting a psychoactive substance).
- 11.**An offence under any of the following provisions of the Road Traffic Act 1988 —
 - (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
 - (b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);
 - (c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit);
 - (d) section 6(6) (failing to co-operate with a preliminary test).

Firearms offences

12.Any offence under the Firearms Act 1968.

13.Any offence under the Firearms (Amendment) Act 1988.

14.Any offence under the Firearms (Amendment) Act 1997.

15.An offence under any of the following provisions of the Violent Crime Reduction Act 2006—

(a) section 28 (using someone to mind a weapon);

(b) section 36 (manufacture, import and sale of realistic imitation firearms).

Fraud, forgery and duty-evasion offences

16.An offence under either of the following provisions of the Customs and Excise Management Act 1979 —

(a) section 170 (disregarding subsection (1)(a))(fraudulent evasion of duty etc.);

(b) section 170B (taking preparatory steps for evasion of duty).

17.An offence under either of the following provisions of the Tobacco Products Duty Act 1979 —

(a) section 8G (possession and sale of unmarked tobacco);

(b) section 8H (use of premises for sale of unmarked tobacco).

18.Any offence under the Forgery and Counterfeiting Act 1981 (other than an offence under section 18 or 19 of that Act).

19.Any offence under the Fraud Act 2006.

20.The offence at common law of conspiracy to defraud.

Immigration offences

21.An offence under any of the Immigration Acts.

Licensing offences

22.Any offence under the Licensing Act 2003.

23.Any offence under any of the following enactments—

(a) Schedule 12 to the London Government Act 1963 (public entertainment licensing);

(b) the Licensing Act 1964;

(c) the Private Places of Entertainment (Licensing) Act 1967;

(d) section 13 of the Theatres Act 1968;

(e) the Late Night Refreshment Houses Act 1969;

(f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982;

(g) the Licensing (Occasional Permissions) Act 1983;

(h) the Cinemas Act 1985;

(i) the London Local Authorities Act 1990.

24.An offence under section 3 of the Private Security Industry Act 2001 (engaging in certain activities relating to security without a licence).

25.An offence under section 7(2) of the Gaming Act 1968 (allowing child to take part in gaming on premises licensed for the sale of alcohol).

26.An offence under section 46 of the Gambling Act 2005 if the child or young person was invited, caused or permitted to gamble on premises in respect of which a premises licence under this Act had effect.

Sexual offences

27.A sexual offence, being an offence —

(a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));

- (b) listed in Schedule 3 to the Sexual Offences Act 2003 (sexual offences for the purposes of notification and orders);
- (c) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);
- (d) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).

Terrorism offences

28.An offence listed in section 41 of the Counter-Terrorism Act 2008 (terrorism offences).

Theft offences

29.An offence under any of the following provisions of the Theft Act 1968 —

- (a) section 1 (theft);
- (b) section 8 (robbery);
- (c) section 9 (burglary);
- (d) section 10 (aggravated burglary);
- (e) section 11 (removal of articles from places open to the public);
- (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;
- (g) section 13 (abstracting of electricity);
- (h) section 15 (obtaining property by deception);
- (i) section 15A (obtaining a money transfer by deception);
- (j) section 16 (obtaining pecuniary advantage by deception);
- (k) section 17 (false accounting);
- (l) section 19 (false statements by company directors etc.);
- (m) section 20 (suppression, etc. of documents);
- (n) section 21 (blackmail);
- (o) section 22 (handling stolen goods);
- (p) section 24A (dishonestly retaining a wrongful credit);
- (q) section 25 (going equipped for stealing etc.).

30.An offence under either of the following provisions of the Theft Act 1978 —

- (a) section 1 (obtaining services by deception);
- (b) section 2 (evasion of liability by deception).

Violent offences

31.An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences).

32.A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).