

Wiltshire Council

Licensing Committee

7 March 2022

Licensing Act 2003: Adoption of procedures in relation to personal licence holders convicted of relevant offences

Summary

The purpose of this report is to inform members of the amendments to the Licensing Act 2003 made by the Policing and Crime Act 2017 and to introduce new procedures relating to these changes.

Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and gave licensing authorities the power to revoke or suspend personal licences. This is a discretionary power, there is not a positive duty placed upon licensing authorities to consider all personal licence holders who may have been convicted. A summary of relevant offences is attached at **Appendix 1**.

Should this licensing authority choose to use this power, the process which must be undertaken by the authority to suspend or revoke a personal licence is set out at section 132A of the Licensing Act 2003.

The decision to revoke or suspend a personal licence must be made by the licensing committee or sub committee, but the action required before making a final decision may be taken by a licensing officer.

Where the licensing authority becomes aware that a holder of a personal licence has been convicted of a relevant offence or foreign offence, a notice must be sent to the holder of a personal licence inviting the holder to make representations regarding the conviction within 28 days. This notice cannot be sent until after the period for lodging an appeal against the conviction for a relevant offence has passed. Where an appeal has been lodged, it must be decided, and the conviction upheld for the licensing authority to exercise its powers.

This notice can be issued by the licensing manager. At the expiry of the 28 day period, the licensing authority must determine whether or not to suspend/revoke the licence. Where the licensing authority is minded not to revoke the licence, it must notify the Chief Constable of the Wiltshire Police of this decision. The Chief Constable may make representations within 14 days of being notified of the licensing authority's proposed decision. A final decision on the suspension/revocation of the personal licence can be made after the expiry of the 14 day period. The personal licence holder may appeal the decision to the Magistrates' Court.

A proposed general procedure that Wiltshire Council could undertake is attached to this report as **Appendix 3**.

Proposal(s)

That the Licensing Committee:

1. Note the content of the report and consider the legislative changes.
2. Delegate the licensing authority's responsibility to a licensing sub committee where relevant.
3. Consider approving the use of a 4th Option - Final Warning letter.
4. Approve the procedure as set out in **Appendix 3** in regard to consideration of personal licence holders with relevant convictions.
5. Note the legislative requirements in regard to revoking or suspending a personal licence as set out in **Appendix 4**.
6. Review the application of these procedures in 18 months.
7. If on review it is agreed to continue with these procedures that the Council's Statement of Licensing Policy be updated to reflect these procedural changes at next review.

Reason for Proposal

Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and gave licensing authorities the power to revoke or suspend personal licences with effect from 6th April 2017.

The proposals are set out to ensure the Council meets its obligations under the Act should it choose to do so.

Author name: Linda Holland

Title: Licensing Manager

Parvis Khansari

Interim Corporate Director Place

Wiltshire Council

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Purpose of Report

1. To advise members of changes to the Licensing Act 2003 which came into force on 6th April 2017 and to introduce new procedures relating to these changes. Prior to 2017, 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.
 - 1.1 This report proposes procedures to be carried out in line with legislation when considering the appropriate action to be taken against personal licence holders with relevant convictions.

Relevance to the Council's Business Plan

2. The Wiltshire Council Business Plan 2017- 2027 sets out the vision to create strong communities, with priorities for growing the economy and protecting the vulnerable and where people are protected from harm and feel safe. This is reflected in the Business Plan Principles 2022-2032.

Main Considerations for the Council

3. As licensing authority responsibilities in relation to personal licence holders holding relevant convictions are now incorporated in the Licensing Act 2003, it is necessary for Wiltshire Council's licensing committee to adopt a procedure to deal with these matters.

Background

4. 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.
 - 4.1 The amendments to the Licensing Act 2003 now give this power to licensing authorities for convictions received on or after 6 April 2017. Where a licensing authority, which has granted a personal licence, 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 the licence for a period of up to six months. Relevant offences are listed in Schedule 4 to the Licensing Act 2003 (as amended).

- 4.2 The Policing and Crime Act 2017 does not set out any hearing procedures for determining whether to suspend/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. However, it does not specify whether a hearing needs to take place. It is proposed that a similar process to that used in licensing hearings be adopted which is an approach used by other licensing authorities. This approach would satisfy the principles of natural justice and provide a recognised framework in the event of an appeal to the Magistrates' Court. The public can be excluded from a hearing if the sub committee considers that the public interest in so doing outweighs the public interest in the hearing.
- 4.3 The Licensing Act 2003 Part 6 places an obligation upon a personal licence holder charged with a relevant offence to inform the Court on charge or no later than first appearance of their status as a personal licence holder. The personal licence holder is under a duty to *inform* the licensing authority of their conviction by way of a notice to the licensing authority stating the nature and date of conviction and sentence. Unless exceptional circumstances apply, that licence should be produced to the Court. The holder of a personal licence must as soon as reasonably practicable, give the relevant licensing authority notice of any relevant conviction and sentence. A personal licence holder who fails to notify as described, commits a further offence. The same provision applies to any determination of appeal against a conviction or sentence.
- 4.4 Section 138(2) of the Policing and Crime Act 2017 dictates that these powers cannot be delegated to Officers. However, the discretionary nature of the powers allows officer consideration as to whether a personal licence holder should be referred to a committee for determination to take place. Such considerations will necessarily be carried out on a case by case basis.

Proposed Procedure

5. Where a licensing officer determines that it is a relevant offence, a decision will be made by the officer whether it may be appropriate for the licensing sub committee to consider whether the licence should be revoked or suspended. A notice must be given to the licence holder confirming the intention to take the matter to licensing sub committee for consideration.
- 5.1 The licence holder has 28 days to provide any relevant information as explained in the notice. Any representation made by the licence holder will be considered along with any other relevant information received from the officer's investigation. This could involve evidence and statements provided by the Police or Home Office in regard to the circumstances surrounding the conviction.
- 5.2 A report will be produced for sub committee detailing the conviction and relevant offence, information supplied by licence holder and any further information gathered during the course of an investigation. A sub committee hearing will be held where the report will be presented, and the licence holder invited to attend to provide a submission and answer any questions from members.
- 5.3 The licensing sub committee members would have the option of 3 decisions that can be made under the Act:

1. To take no action
2. To suspend the personal licence for a period not exceeding 6 months
3. To revoke the personal licence

If the decision made is to take no action, or suspend the personal licence, the officer must then notify the Chief Constable of Wiltshire Police of the decision and give them 14 days to make any representations. Where the licence holder is convicted of immigration offences or paid a civil penalty, the licensing authority should notify Home Office Immigration Enforcement and allow representations in the same manner.

- 5.4 A consideration for licensing committee members is whether the Council wishes to adopt a 4th option: that of a final warning letter, where circumstances are such that members consider that options 1-3 are not decisions they wish to pursue, but on the balance of evidence the sub committee conclude a final warning is merited.
- 5.5 The Act does not allow for warning letters specifically (neither does it elsewhere in licensing) however this option is an established procedure adopted by other authorities. We would, as with other outcomes, have to notify any such decision to Wiltshire Police as relevant information to them.
- 5.6 If Police or Home Office Immigration Enforcement respond and ask for the revocation of personal licence, a second hearing will be held for members to reconsider the original information, the new representations from police, any representations from the licence holder and give a final decision. Following consideration of the new information, the same 3 or 4 options apply.
- 5.7 If no response is received from Police or the response indicates it is for information only, then the licensing manager will need to confirm if the original decision stands. This may be done without a second hearing.
- 5.8 The provisions of the Rehabilitation of Offenders Act 1974 will apply for the purposes of this guidance. Where there is a delay between conviction and notification to the licensing authority, the licensing officer will consider whether that conviction is 'spent' and make an appropriate decision as to whether the matter is referred to the licensing sub committee: **Appendix 2**.
- 5.9 The overall volume of conviction notifications and subsequent decision appeals is expected to be low. It is *not* proposed that retrospective vetting of personal licence holders for previous convictions is conducted.

Licensing Policy

6. Section 6.7 of Wiltshire Council's Statement of Licensing Policy acknowledges that the Policing and Crime Act 2017 amended the Licensing Act 2003 and allows the licensing authority to suspend up to 6 months or revoke a personal licence upon a personal licence holder being convicted of a relevant offence.

Recent indications

7. The licensing authority has become more aware that on occasion licence holders have failed or are failing to advise the Court that they hold a personal licence, so the matter has not been addressed at point of conviction.

Safeguarding Implications

8. Where appropriate, ensuring that any individual holding a personal licence that is convicted of a relevant offence(s) ability to continue to hold said licence is appropriately and proportionally reviewed by the licensing authority, thus, ensuring any safeguarding implications are considered.

Public Health Implications

9. None

Environmental and Climate Change Considerations

10. None

Corporate Procurement Implications

11. None

Equalities Impact of the Proposal

12. None

Risk Assessment

13. There are no significant risks arising from adoption of the procedure.

Risks that may arise if the proposed decision and related work is not taken

14. Wiltshire Council will not be able to demonstrate it has an appropriate procedure in place to address personal licence holders convicted of relevant offence under the Licensing Act 2003.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

15. None

Financial Implications

16. It is possible that if a licensing committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council.
- 16.1 The Council could incur additional costs as a result of an increase in licensing hearings however the numbers of hearings anticipated are minimal and therefore it is not anticipated to be significant in the context of the Council's overall finances.

Legal Implications

17. The Policing & Crime Act 2017 does not set out any hearing procedures for determining whether or not to revoke/suspend personal licences. The s.182 guidance issued by the Secretary of State specifies that a licensing committee or a sub committee should determine the application to revoke a personal licence but does not specify whether or not a hearing needs to take place.

17.1 Section 7(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 committee to elect to dispose of these hearings by:

1. Delegating to the licensing sub committee the power to determine the application on the papers without a formal hearing; or
2. Delegating the decision making powers to the licensing sub committee. The hearing procedure and timescales that apply to contested personal licence applications can apply to applications to revoke/suspend personal licences.

The provisions for appeal under Schedule 5, Part of the Licensing Act 2003 provides for appeal to be made to the Magistrates Court in the usual way within 21 days of the determination.

17.2 All relevant applicant types under the Licensing Act are already determined by a process of hearings by a sub committee. If the licensing sub committee is further delegated to make these decisions, it will align with the functions of the licensing sub committee.

Options Considered

18. The options are detailed under the Licensing Act 2003.

Proposals

19. The Licensing Committee is asked to:

- Note the content of the report and the legislative changes.
- Confirm that the licensing sub committees hold the authority to suspend or revoke a personal licence.
- Approve the use of a 4th Option - Final Warning letter.
- Approve the general procedure in regard to revoking or suspending a personal licence as set out in **Appendix 3**.
- To note the legislative procedure in regard to revoking or suspending a personal licence as set out in **Appendix 4**.

- To review the application of these procedures in 18 months.
- If on review it is agreed to continue with these procedures that the Council's Statement of Licensing Policy be updated to reflect these procedural changes at next review.

Report Author: Linda Holland

Licensing Manger Public Protection. Tel: 01249 706410
linda.holland@wiltshire.gov.uk

Background Papers:

Licensing Act 2003
Section 182 Guidance
Policing and Crime Act 2017

Appendices

Appendix 1 - Relevant Offences
Appendix 2 - Rehabilitation of Offenders
Appendix 3 - General working Procedure
Appendix 4 - Legislative Procedure