



City of Westminster

Licensing Committee Report

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| Meeting: | <i>Licensing Committee</i> |
| Date: | <i>Wednesday 9th March 2016</i> |
| Classification: | <i>For General Release</i> |
| Title: | <i>Policing and Crime Bill 2015-16</i> |
| Wards Affected: | <i>All</i> |
| Financial Summary: | <i>N/A</i> |
| Report of: | <i>Operational Director for Public Protection and Licensing</i> |

1. Executive Summary

- 1.1 This report sets out the proposals within the Policing and Crime Bill to amend the Licensing Act 2003 (the Act). The proposals within the Bill are to:
 - 1.1.1 amend the meaning of alcohol,
 - 1.1.2 amend the provisions for Summary Reviews,
 - 1.1.3 provide a new power for the Licensing Authority to suspend or revoke a personal licence when notified of a conviction for a relevant offence,
 - 1.1.4 expand the list of relevant offences for personal licences holders, and
 - 1.1.5 remove the need for the Secretary of State to lay statutory guidance before Parliament.

2. Recommendation

- 2.1 That the Committee note the content of this report.

3. Policing and Crime Bill

- 3.1 On the 10th February 2016 the Home Secretary introduced the Policing and Crime Bill (the Bill) to the House of Commons. It introduces a raft of new or amended measures associated with crime, policing and the emergency services.

- 3.2 The Bill proposes five specific amendments to the Licensing Act 2003. Some of these amendments are minor in nature, such as the change to the meaning of alcohol, changes to the way statutory guidance is published and adding relevant offences for personal licences. Two of the proposals do have the potential to have more of an impact on how the City Council, as Licensing Authority undertakes its functions associated with personal licences holders who are convicted of a relevant offence and when considering, determining and defending appeals for summary review applications.

4. Meaning of alcohol: Powdered and Vaporised Alcohol

- 4.1 It is proposed that the meaning of alcohol is amended to include alcohol in any state. The government are proposing this amendment to enable the Act to capture powdered and vaporised alcohol which could potentially become popular in the UK.
- 4.2 At present powdered alcohol or palcohol as it is commonly known is only authorised to be sold in the United States of America. In the explanatory notes accompanying the Bill the government state that “as far as is known it is not yet available to buy in America or anywhere else”.
- 4.3 Officers have conducted some simple online research and have identified that powdered alcohol products are available to purchase online and there are some websites offering the products for sale and delivery in the UK already once it becomes legal. The powdered alcohol (palcohol) being advertised for sale in the UK is available from £2.99 and has an alcohol volume of 10% when mixed with 170ml of water (see Appendix 1).
- 4.4 Vaporised alcohol is alcohol in the form of a vapour which is pumped into a room so that customers can inhale it. Vaporised alcohol can also be inhaled from an inhalation device. Vaporised alcohol is available in the UK and although we are not aware of any premises offering their customers the opportunity to inhale alcohol within Westminster there has been a premises operating in the London Borough of Southwark who has been providing its customers the experience of breathing in alcohol (see Appendix 2).
- 4.5 The proposed amendment to include alcohol in any state would mean that any premises offering powdered or vaporised alcohol would need to be licensed under the Act.

5. Summary review: Interim steps

- 5.1 The Act contains the power for the police to make an application for a summary review if the premises have become associated with serious crime or disorder. The Licensing Authority must consider within 48 hours from the receipt of a summary review application whether it is necessary to impose interim steps such as suspending the premises licence. These interim steps remain in effect until a full review hearing has been conducted which must be within 28 days of the summary review application being received.

- 5.2 The licensee can make a representation to the Licensing Authority after the interim steps have been taken. If a representation is made by the licensee of the premises the Licensing Authority must hold a hearing within 48 hours of receipt of that representation to consider it.
- 5.3 In practice the City Council does invite the premises licence holder to a hearing when it considers the interim steps which offers them the ability to put across their views prior to a decision being made on what interim steps are necessary. This has had the effect of reducing the need for the licensee to make representations once the interim steps are put in place. However, some licensees may not be able to attend that hearing at such short notice and in any event they can exercise their right to make a representation following the interim steps decision.
- 5.4 There are currently no limits on the number of times a licensee could exercise their right to make a representation to the Licensing Authority. If any representations are made the Licensing Authority has a duty to hold a hearing within 48 hours of receipt of that representation. A licensee could potentially put in multiple representations during the course of the 28 day period, prior to the full review hearing taking place. The Licensing Authority would have to hold a hearing to consider each representation during that period. Although it is unlikely that this would occur it is a possibility and the government are aware of situations where this has happened. The proposed amendment to the Act limits the licence holder to only making further representations if there has been a material change in circumstances since the previous representations had been considered by the authority at an interim steps hearing.
- 5.5 The City Council has already been operating a similar approach to that proposed. In the event that changes to the operating practices of the premises have been proposed following the implementation of the interim steps, for example a reduction of hours, further security arrangements or cessation of a licensable activity (which the police might also consider to be appropriate steps) the licensees would submit a representation to the Licensing Authority which would then prompt a hearing within 48 hours. At that hearing the licensee would put across the proposals to the Licensing Sub-Committee who would consider them and then decide whether to amend the interim steps in line with those proposed by the licensee, having regard also to any representations that may be received from the police.
- 5.6 As mentioned above, the full review hearing must take place within 28 days of the receipt of the application for a summary review of the premises licence. The decision taken at the review hearing only comes into effect once the time limit for appealing the decision (21 days) has expired or any appeal has been disposed of.
- 5.7 There is some legal ambiguity over what happens after the decision of the Licensing Authority at the full hearing and the date when that decision eventually takes effect. The issue relates to whether interim steps remain in place during this period. There is also uncertainty as to whether the interim steps can be withdrawn or amended at an earlier stage.

- 5.8 The government are concerned that the ambiguity in the law has resulted in unfair steps being imposed on businesses on the one hand (which might be unable to operate effectively during a lengthy appeal process) or unsuitable premises continuing to operate freely during that appeal process on the other hand.
- 5.9 The proposal to amend this part of the Act will make it a requirement that the Licensing Authority considers the interim steps at the full review hearing. In effect the Licensing Authority will have to make two decisions at the conclusion of that hearing. The first will be to take such steps (if any) as it considers necessary for the promotion of the licensing objectives, this being the decision on the full review itself. The second will be to determine what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making the appeal.
- 5.10 In considering the proportionality of the interim steps the Licensing Authority must review the interim steps to ensure they are appropriate having regard to the need to promote the licensing objectives. In reviewing those interim steps the Licensing Authority must consider any relevant representations and determine whether to withdraw or modify any interim steps.
- 5.11 Any interim steps that have been determined at that full review hearing will apply until the end of the period given for appealing against the decision of that review (21 days) or if the decision is appealed until that appeal is disposed of.
- 5.12 The Bill also proposes to introduce new appeal right for the police and the licence holder on the interim steps imposed at the full review hearing. This power requires an appeal to be heard within 28 days from the date it is lodged with the Court. This new appeal provision could create additional work and risk to the Council in dealing with these appeals in such a short period of time. The vast majority of decisions made by the Licensing Authority relating to summary review applications are appealed. It is expected that the interim steps imposed by the Licensing Authority at the full review hearing will also be appealed if an appeal is lodged for the full review decision.

6. Forfeiture and suspension of personal licences on conviction of relevant offences

- 6.1 A personal licence holder must produce their personal licence to the court if they have been charged with a relevant offence (as defined within Schedule 4 of the Act) before the case is heard. The Act carries a provision within it that if a personal licence holder is convicted of a relevant offence the court can order the forfeiture or suspension of that licence. It is up to the court if they exercise this power to impose either a suspension on the personal licence or revoke it. However, evidence suggests that the courts are not routinely exercising their powers in this regard.
- 6.2 If the personal licence holder is found guilty of a relevant offence or foreign offence then he/she must notify the Licensing Authority who issued that licence. Once notified of the relevant offence or foreign offence the Licensing Authority currently has no power to suspend or revoke that licence; nor is there provision

for a court to order the forfeiture or suspension of a personal licence other than at the point the licensee is being sentenced for a relevant offence.

- 6.3 Due to the nature of some of the relevant offences there would be a potential serious risk to the licensing objectives for an individual to continue to hold a personal licence and work within licensed premises until sentenced.
- 6.4 The proposed amendment to the Act will retain the current court powers and provide additional powers to the Licensing Authority to enable it to suspend a licence for a period of up to 6 months or revoke it. The power to suspend or revoke a personal licence cannot be delegated to officers and will be a function for the Licensing Sub-Committee. The personal licence holder will have a right of appeal to the magistrates' court against any decision of the Licensing Authority to suspend or revoke the licence.

7. Addition of further relevant offences

- 7.1 A conviction for a relevant offence can be grounds for refusing a new personal licence (or for suspending or revoking an existing licence if the provisions described in section 6 of this report are implemented). The proposal within the Bill is to expand the list of relevant offences for personal licences holders to include:
 - 7.1.1 The sexual offences listed in schedule 3 to the Sexual Offences Act 2003;
 - 7.1.2 The violent offences listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003;
 - 7.1.3 The manufacture, importation and sale of realistic imitation firearms contrary to section 36 of the Violent Crime Reduction Act 2006;
 - 7.1.4 Using someone to mind a weapon contrary to section 28 of the Violent Crime Reduction Act 2006; and
 - 7.1.5 The terrorism-related offences listed in section 41 of the Counter-terrorism Act 2008.
- 7.2 The schedules and sections referred to in 7.1.1, 7.1.2 and 7.1.5 above are large documents. Due to the size of these documents we have not included them within this report. However, they will be available to members of the licensing Committee for inspection at the hearing if requested.
- 7.3 It should be noted that the list of relevant offences will be further expanded shortly with the inclusion of offences under the Psychoactive Substances Act 2016 which was given Royal Assent on the 28th January 2016. The offences that will be added to Schedule 4 of the Act are the offences of producing, supplying or offering to supply, possession, importing or exporting of a Psychoactive Substance. The Psychoactive Substances Act 2016 is likely to come into force in full later this year.

8. Licensing Act 2003: Guidance

- 8.1 The Secretary of State must produce Guidance to Licensing Authorities under section 182 of the Act. However, before a revised version of the guidance can be published the Secretary of State must lay a draft of that guidance before both Houses of Parliament. The draft guidance will then lie for a period of 40 days to enable each house the option of disapproving the draft guidance. If this guidance is disapproved by either House the Secretary of State must make such further revisions to the licensing guidance as appear to him to be required in the circumstances.
- 8.2 Since the 2003 Act came into force, there have been a number of revisions to the guidance, none of which have been subject to Parliamentary debate. The proposed amendment within the Bill will enable the Secretary of State to publish any revised guidance going forward without the need to lay it before each House of Parliament. This will enable amendments to be made quicker and reduce parliamentary time.

9. Financial Implications

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

10. Legal Implications

- 10.1 The legal implications have been addressed in the body of this report. In particular, it should be noted that there is a risk of increased appeals and costs as a result of the additional expedited appeal rights referred to in paragraph 5.12 above. The Home Office considers the risk of expedited appeals to be minimal on the basis that licensees will have been given the new opportunity to put forward their case against any interim steps at the conclusion of the full review hearing. However, it is not considered that such an opportunity will actually mitigate against the need to appeal if the interim steps involve either the loss of a key licensable activity or the suspension of the licence.

11. Staffing Implications

- 11.1 There are no staffing implications as a result of this report.

12. Reason for Decision

- 12.1 The report is provided for information purposes only. It sets out the proposals to amend the Licensing Act 2003 within the Bill. The Bill is at the start of the process of becoming an Act in Parliament and it is likely that the Bill will receive proposed amendments through this process. The Bill will not be fully enacted until it receives Royal Assent.

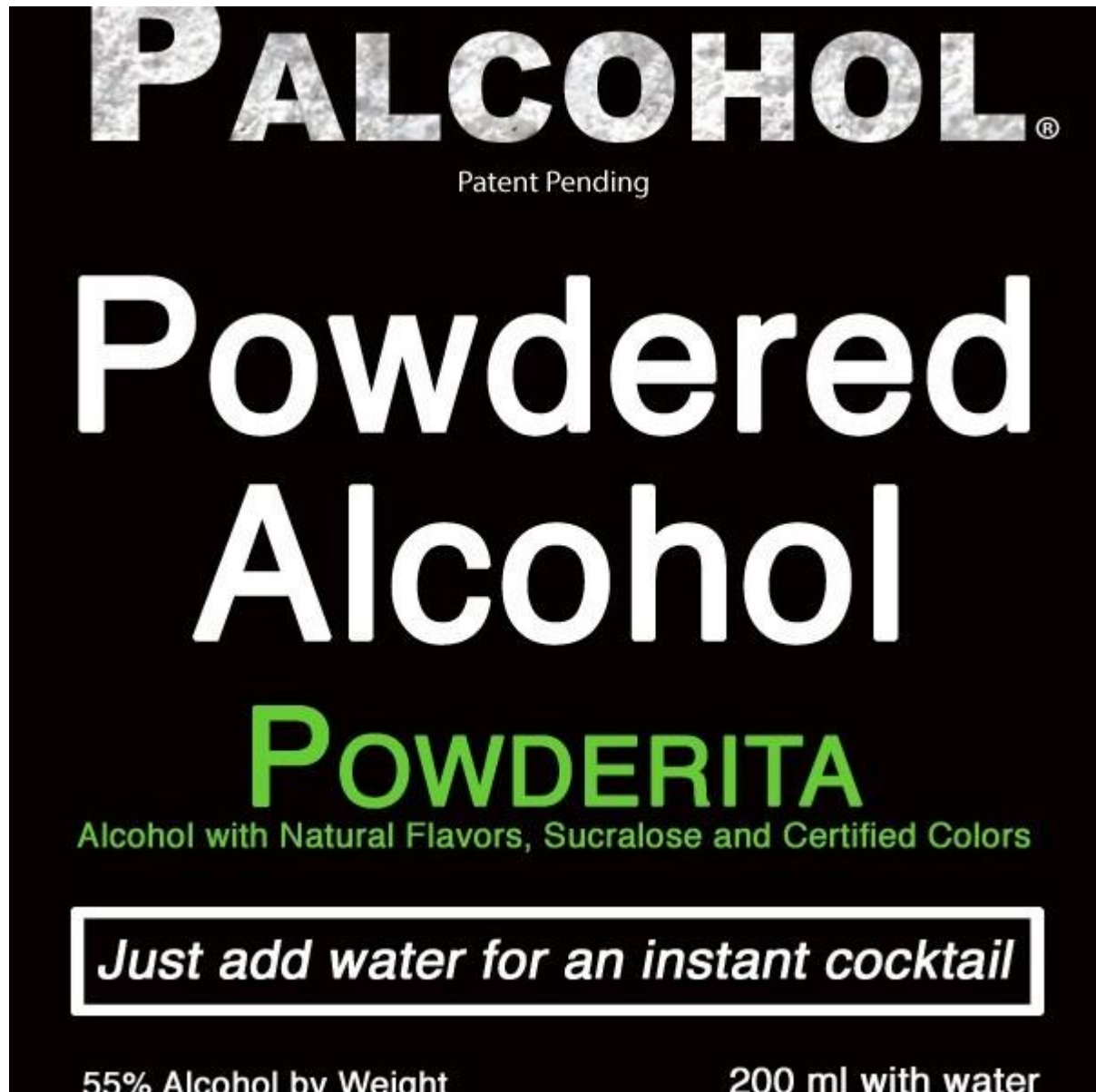
If you have any queries about this report or wish to inspect one of the background papers please contact Mr Kerry Simpkin on 020 7641 1849 or via email ksimpkin@westminster.gov.uk.

Appendices

Appendix 1 – Powdered Alcohol Advertised for sale in UK

Background Papers

- Licensing Act 2003
- Policing and Crime Bill (Bill 134 2015-16 (as introduced))
- Explanatory notes to the Policing and Crime Bill (Bill 134 2015-16 EN)
- Sexual Offences Act 2003
- Criminal Justice Act 2003
- Violent Crime Reduction Act 2006
- Psychoactive Substances Act 2016
- Counter-Terrorism Act 2008



Cocktail Powdered Alcohol

£2.99

Product Description

Enjoy Powderita a Margarita style cocktail in powder form. Each packet comes ready to mix by adding 6 ounces (170 Milliliters) of water creating the same volume as one regular drink (200ml).

This product is absolutely great for enjoying a drink at home or when leading an active lifestyle, such as camping, hiking, fishing or festivals, as it is much easier to transport and a lot lighter than lugging around heavy bottles. Imagine hosting a cocktail party at the top of a mountain, with Palcohol you can!

- Each packet of Palcohol is 4" x 6" in size
- Palcohol is gluten free
- One packet weighs about an ounce
- Each packet is about 80 calories
- 55% alcohol by weight
- 10% alcohol by volume

This product will be in high demand when it is released in the UK this summer, so subscribe now to make sure you don't miss out.

ALCOHOLIC ARCHITECTURE - Borough Market, London

Open until July 2016

Bompas & Parr's Alcoholic Architecture is live in Borough Market, featuring a walk-in cloud of breathable cocktail. The installation is an alcoholic weather system for your tongue where meteorology and mixology collide against a canvas of monastic mayhem, referencing the gothic splendour of neighbouring Southwark Cathedral.

Set in a Victorian building that was once the original home and offices of The Trustees of Borough Market, the bar takes over the basement – itself a former banana store for unripe fruit arriving from the West Indies – and will source many ingredients for its drinks list from Borough Market itself.

[BUY TICKETS HERE](#)

Watch this amazing 360° walk-through of Alcoholic Architecture by Fundamental. Use the arrows in the top left corner to navigate. (Please note: to experience the best 360° affect please view through a smart phone with YouTube installed. Alternatively view through a Chrome or Firefox browser.)

Alcoholic Architecture sits next to the UK's earliest gothic cathedral and on the site of an ancient monastery. These themes are channelled through a drinks lists entirely comprised of spirits and beers created by monks: potations such as Chartreuse, Benedictine, Trappist beer and even the notorious Buckfast – a fortified wine so savage that Scotland's parliament is reportedly drafting legislation to stop the caffeinated intoxicant from entering their country. All will be featured in elegantly balanced, refined and luxurious conventionally served drinks that guests can take back into the cloud.

Alcoholic Architecture

1 Cathedral Street

Borough Market

London SE1 9DE

Opening Times:

Monday: Closed

Tuesday: Closed

Wednesday: 19.00 - 22.00

Thursday: 18.00 - 23.00

Friday: 16.00 - 23.00

Saturday: 12.00 - 23.00

Sunday: Closed

Tickets:

Book your tickets via [billetto.co.uk](https://www.billetto.co.uk)

Entry cost between £10 and £12.50 depending on the day and time.

We keep a number of tickets for walk-ups, but for guaranteed entry we recommend booking tickets in advance, especially for the weekend, as it gets particularly busy.

Please note:

This event is for 18s and over only. The bar is not easily wheelchair accessible.

Please contact alcoholicarchitecture@bompasandparr.com to discuss your specific access requirements.