



department for  
**culture, media  
and sport**

## APPENDIX

# Proposal to amend Licensing Act 2003 (Personal Licence: Relevant Offences)

## Licensing Act 2003

15 December 2009

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## Chapter 3: DETAILED PROPOSALS

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- 3.1** This section will set out a list of the proposed new offences. It will explain the scope of each offence, why it is being considered and ask whether it should be included. You can find a summary of the questions in Chapter 4.
- 3.2** We believe that schedule 4 should be kept as concise as possible. For this reason we have subjected the offences that we have considered to the following three tests:
1. Is the offence relevant to carrying out the duties required of a personal licence holder?
  2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
  3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?
- 3.3** In order to try and keep the list as concise as possible, we are also welcoming views and evidence of whether any existing relevant offences should be removed.
- 3.4** There are a number of additional offences that have been suggested by stakeholders and which the Government is minded to include, although it is not entirely clear how far they meet the requirements of the three tests, but may warrant inclusion as relevant offences. We would therefore like views on whether these offences should be included as relevant offences now, or at some point in the future when further evidence is available. There are also two further areas for consideration which we would welcome your views on.
- 3.5** For the proposed new offences, please see Annex B.

### Failure to co-operate with a preliminary test

- 3.6** The existing list of relevant offences includes three offences under the Road Traffic Act 1988. In essence, these relate to either causing death by careless driving or driving whilst under the influence of alcohol or drugs. However, a noticeable omission is the offence of failing to co-operate with a requirement to provide a preliminary test (whether in relation to alcohol, impairment or drugs). Under section 6 of the Road Traffic Act 1988, a constable may require a person to co-operate with a preliminary test if, for example, a constable reasonably suspects that the person is driving or has been driving when they have alcohol or a drug in their body, are under the influence of alcohol or a drug, or are impaired. A person commits an offence if without reasonable excuse they fail to co-operate with a preliminary test. A preliminary test includes any of the tests described in sections 6A to 6C of the Road Traffic Act 1988, which include a preliminary breath test (section 6A), a preliminary impairment test (section 6B) and a preliminary drug test (section 6C). We propose that the offence of failing to co-operate with a preliminary test is added to the relevant offences.
- 3.7** We believe that the addition of this offence removes this anomaly and introduces consistency into the existing regime.

## Question

**1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.**

## Conspiracy Offences

- 3.8** Many offences also have a related offence of conspiracy to commit that offence.
- 3.9** The crime of conspiracy is the agreement by two or more people to carry out a criminal act. The criminal act with which we are concerned is one or more of the relevant offences. Even if nothing is done beyond the agreement, the offence of conspiracy is complete. The agreement is key to the offence. This cannot be a mere mental operation; it must involve spoken or written words or other overt acts. If the defendant repents and withdraws immediately after the agreement has been concluded, they are still guilty of the offence. There must be an agreement to commit the criminal offence, but the motives of the conspirators are irrelevant.
- 3.10** Conspiracy arises in both statute and common law (common law is essentially the law developed by the courts). The Criminal Law Act 1977 creates and defines the offence of statutory conspiracy. It is not limited to agreements to commit a statutory crime (agreements to commit the common law offence of murder are charged under this offence). Under the common law, it is an offence to agree (a) to defraud, whether or not the fraud amounts to a crime, or (b) to do an act which tends to corrupt public morals or outrage public decency, whether or not the act amounts to a crime. The proposed new offences will not include this latter offence of conspiracy as it does not fall within the range of relevant offences. An agreement to commit a crime involving fraud or dishonesty is both a statutory conspiracy and a conspiracy to defraud.
- 3.11** The Government proposes that the related offences of conspiracy in respect of the existing relevant offences should be added to the list of relevant offences and therefore capable of being considered by the police in relation to applications for personal licences.
- 3.12** For the list of proposed offences of conspiracy offences which would be added, please see Annex B. We would add that each and every existing relevant offence does not have a corresponding offence of conspiracy as it is not possible to conspire to commit certain existing relevant offences. For example, there is a relevant offence of false trade description of goods in circumstances where the goods in question are or include alcohol under section 1 of the Trade Descriptions Act 1968. It is not possible to conspire to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of conspiracy.

## Question

**2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.**

## Attempt Offences

- 3.13** As with offences of conspiracy considered above, many offences also have a related offence of attempting to commit an offence. A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 if they do an act which is more than preparatory to the commission of the offence with the intention of committing an offence.
- 3.14** In each case it is a question of fact whether the accused has gone sufficiently far towards the full offence to have committed the act which is a key part of the attempt. If the accused has passed the preparatory stage, the offence of attempt has been committed and it is no defence that they then withdrew from committing the completed offence.
- 3.15** The Government proposes that the attempt offences in relation to the existing relevant offences should also be added to the list of relevant offences. We believe that the relevant offences are such that a conviction of attempting to commit any one of these offences should also be capable of being considered by the police in relation to applications for personal licences.
- 3.16** For the list of potential attempt offences that would be added, please see Annex B. We would add that each and every relevant offence does not have a corresponding offence of attempt as it is not possible to attempt to commit certain relevant offences. For example, there is a relevant offence of causing death by careless driving while under the influence of drink or drugs under section 3A of the Road Traffic Act 1988, but it is not possible to attempt to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of attempt.

## Question

**3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.**

**4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.**

## **Relevant Offences from Acts that the 2003 Act replaced.**

**3.17** There are a number of Acts that the 2003 Act wholly or partly repealed on 24 November 2005. However, as a person could have committed such an offence before the date of repeal and could therefore have held an unspent conviction for one or more of these offences, these were included in the existing list of relevant offences. These include the following Acts:

- London Government Act 1963
- Licensing Act 1964
- Private Places of Entertainment (Licensing) Act 1967
- Theatres Act 1968
- Late Night Refreshment Houses Act 1969
- Local Government (Miscellaneous Provisions) Act 1982
- Licensing (Occasional Permissions) Act 1983
- Cinemas Act 1985
- London Local Authorities Act 1990

**3.18** A person could also have been convicted of a conspiracy or attempt to commit one of these relevant offences. As a result, we have considered including them in the list of new offences. However, we do not believe that any of the relevant offences under these Acts attracted a prison sentence exceeding six months, which means that any such convictions are all capable of becoming 'spent'. Whilst the rehabilitation period would vary from case to case depending on the nature and/or extent of the sentence and it would be possible that there are some convictions for these relevant offences which remain unspent, we have not been given any examples of an unspent conviction for any of these offences. We have therefore decided not to include new offences of attempt and conspiracy related to the relevant offences that were repealed by the 2003 Act.

**3.19** We would welcome views on whether you think that this is an appropriate decision to have taken. We would also welcome any evidence of unspent convictions for the offences concerned.

## **Questions**

**5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?**

**6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act.**

## Removal of Offences

- 3.20** We are also consulting on whether there are any offences currently included in the list of relevant offences that you feel should be removed. A list of the existing relevant offences is at Annex A.
- 3.21** All relevant offences should be judged against the general benchmark ‘Should the police be capable of considering whether a person who has been convicted of the offence in question be granted a personal licence or might that not be appropriate because, for example it could undermine the crime prevention objective?’ In order to help establish this, we would also encourage you to consider them against the three tests identified in paragraph 3.2. These are:
1. Is the offence relevant to carrying out the duties required of a personal licence holder?
  2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
  3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?
- 3.22** There may also be relevant offences that you feel should not be included because the number of prosecutions for the particular offence is so low that their inclusion is not necessary.
- 3.23** It is our opinion that the list of relevant offences should be as concise as possible. Whilst we need to make sure that it contains all necessary protection to the public, we also believe that in order to develop a good working understanding of the offences, it should not contain any superfluous or unnecessary offences. We feel that it is important that police time is not wasted in considering offences that are either irrelevant to the duties of a personal licence holder or are of a minor nature which does not impact on the personal licence holder’s duties. We would also not wish to deter people from applying for a personal licence unnecessarily. For these reasons, we would be particularly interested in hearing the views of the enforcement agencies.

## Questions

**7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?**

## Additional Offences

- 3.24** In addition to consulting on whether there are any offences in the relevant offences that you feel should be removed from the list, the Government is minded to include a further two offences, drunk and disorderly behaviour in a public place and possession of a controlled drug. Although we are mindful that the list of relevant offences should be as concise as possible, we feel there may be reason to include these offences even though it is not entirely clear at the present time that they pass the three tests.

- 3.25** A conviction for drunk and disorderly behaviour under section 91 of the Criminal Justice Act 1967 may indicate an irresponsible attitude towards alcohol. This offence will often be dealt with through the issue of a £80 penalty notice (which is not recorded as a conviction) which may suggest that it does not carry the same level of seriousness as existing relevant offences. However, it can be argued that, in more serious instances, there may be a prosecution and conviction which would then allow the police to consider the suitability of the offender to act as a personal licence holder. But it is also the case that a conviction may have resulted from an individual exercising their right to have the case heard in court (as opposed to accepting a penalty notice) rather than be an indication of the seriousness of the offence.
- 3.26** The existing relevant offences already recognise that licensed premises can be associated with drug dealing. Although the Government is proposing to add the offences of conspiracy and attempt to produce and/or supply a controlled drug to the list of relevant offences, it has been suggested that an unspent conviction for possession of a controlled drug under the Misuse of Drugs Act 1971, might also be a legitimate reason for the police to consider the suitability of a prospective personal licence holder, for example, if that individual is known to associate with drug dealers. As one of the three tests concerns the severity of the offence, the Government is particularly interested in views on whether possession of all classes of a controlled drug should be considered a relevant offence.

## Questions

**8. Should an unspent conviction for drunk and disorderly behaviour in a public place be included in the list of relevant offences? Please include the reasons for your view.**

**9. Should an unspent conviction for the possession of a controlled drug be included in the list of relevant offences and, if so, which classes of a controlled drug should be included. Please include the reasons for your view.**

## Areas for further consideration

- 3.27** The Government has recently introduced new arrangements to deal with persistent sales of tobacco to under 18s and is considering whether such sales should be considered as a relevant offence. As this is a relatively new measure, will look at this again in the near future once its use and impact becomes clearer.
- 3.28** There are also offences under the Food Safety Act that are being considered as a part of the Government's work on a code of practice for the retail of alcohol. These offences are not yet part of legislation. Should they become statutory offences, Government is minded to consider whether these offences meet the

three tests laid out above and to consider whether they are therefore appropriate to be included as 'relevant offences' under Schedule 4 of the Act

## Question

**10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the Food Safety Act should be reflected in the relevant offences?**

## Impact Assessment

- 3.29** An Impact Assessment accompanies this consultation at Annex C. For a more detailed explanation of the costs and benefits, please see this. We believe that the amendments proposed will have a marginal cost to businesses.
- 3.30** We have not been able to calculate the number of people that the new amendments will affect. This is largely because, other than failure to cooperate with a preliminary breath test, it has not been possible to obtain the data for how many people are convicted of the new offences.
- 3.31** In the case of the offence of failing to cooperate with a preliminary test, we were able to obtain data for the number of people convicted for failing to cooperate with a preliminary breath test. We could then calculate how many of these people are likely to apply for a personal licence. We then used this to base an estimate of the number of people likely to apply for a personal licence with a conviction for failing to cooperate with a preliminary impairment test or a preliminary drugs test. This supported our belief that a very small number of people would be affected. For details of our findings, please see the Impact Assessment that accompanies this consultation at Annex C.
- 3.32** In respect of the proposed addition of the related offences of conspiracy and attempt, it has not been possible obtain statistics for offences of conspiracy other than conspiracy to murder because this is the only offence of conspiracy for which separate statistics are available; the figures for the number of convictions of other offences of conspiracy is not separated out from the related substantive offence. Basing an estimate on the incidence of conspiracy to murder alone would not provide us with an accurate indication of the incidence of the new offences as a whole, as the numbers of convictions for these is likely to vary significantly from offence to offence. The Ministry of Justice, which is responsible for compiling these statistics, has also advised that trying to collate data about the number of convictions for the new offences would take a disproportionate amount of time and effort in view of the small numbers of people likely to be affected.
- 3.33** Furthermore, having this data would not make it possible to calculate accurately how many of these people are likely to apply for a personal licence. It should also be taken into account that having an unspent conviction for a relevant offence does not preclude a person from being granted a personal licence, but instead means that the police will consider the application in light of such a conviction.



- 3.34** We do however estimate that the number of people affected by these proposals will be very small. Between April 2006 and March 2008, an average of 388 applications for a personal licence were refused per annum, representing 0.7% of all personal licence applications. The Government does not estimate that this would be significantly increased by the proposed changes. The changes will only affect those who would like to apply for or renew a personal licence and who have an unspent conviction for one or more of the proposed new offences.
- 3.35** There will be an application cost for those people that apply for a personal licence and are refused as a result of a new offence, which we estimate to be £284 per application (for a full break-down of this cost, please see the Impact Assessment at Annex C). It is however possible that some people with an unspent conviction for the new offences may be deterred from applying for a personal licence.
- 3.36** There is also a potential loss of earnings cost for those that are prevented or deterred from obtaining a personal licence based on the assumption that a person could command higher wages as a personal licence holder. However, these proposals would not preclude them from working in licensed premises and would not affect them in other employment fields. We therefore feel that the effect of this will be very small.

## **Benefits**

- 3.37** The benefits of the proposal will be social rather than directly financial. The offences proposed are designed to enable greater scrutiny of people who have an unspent conviction of the offences proposed in order to help ensure that they uphold and promote the licensing objectives. This will allow the police to advise the licensing authority to refuse applications for a personal licence from persons that they consider unfit to fulfill the duties and responsibilities of a personal licence holder. This will help to ensure that licensed premises are responsibly run.
- 3.38** There could also be indirect benefits as if a licensed premises is responsibly run, the likelihood that it will have problems which could lead to a licence review and possibly to conditions being added to its premises licence is reduced. This would avoid a potentially costly and burdensome process.

## **Questions**

- 11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?**
- 12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?**
- 13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?**

A full copy of the DCMS proposals can be found at:  
[http://www.culture.gov.uk/images/consultations/condoc\\_relevantoffences.pdf](http://www.culture.gov.uk/images/consultations/condoc_relevantoffences.pdf)