

Licensing Update

March 2010

Since the introduction of the Licensing Act 2003 nearly five years ago, the Department of Culture, Media and Sports (DCMS), and more latterly the Home Office, has contrived in various ways to change the legislation or introduce other Acts of Parliament that have a direct bearing on how you can operate your licensed premises.

This update is designed simply to highlight some of those changes that are currently in force and also brief you on some of the proposed changes that are currently in consultation with stakeholders.

Minor Variations

This application was introduced by way of a statutory instrument (SI) and came into force at the end of July 2009. It aimed to correct the perceived bureaucracy of having to make a lengthy and expensive variation application. This requires service to all responsible authorities together with advertising in a local newspaper just to achieve a minor alteration to the layout of the premises, or wanting to add a non-contentious licensable activity such as exhibition of films. You cannot, however, extend your hours for the supply of alcohol or make a change that impacts on the four licensing objectives.

Adding a porch or changing the bar layout may not impact on the objectives and thus might be suitable for a minor variation application. We say might because the final arbiter of whether the application can be made in this format is left to the licensing authority. And you can predict that each authority seems to have a very wide perception of what is or isn't minor. Practice has shown this already to be the case.

Our advice would be to draft an application form and submit it to see what the reaction might be. If approval is given, then the procedure is relatively simple in that you only have to serve it on the licensing authority with a fixed fee of £89.00. They then decide if any of the responsible authorities should be made aware of the changes proposed and invite representations. A notice has to be displayed on the premises inviting representations from any interested party. If none are received after ten days, the authority has five days to grant the variation. Note that no hearing can take place as a consequence of objections received, so the authority is judge, jury and executioner!

Removal for the need of a Designated Premises Supervisor in Community Premises

The same SI also allowed for an application to be served requesting that the mandatory condition requiring a DPS and personal licence holder be disapplied if the premises licence allowed the supply of alcohol. This recognised that many social clubs operating from village halls, for example, were mainly run by a committee rather than an individual. Note that the only premises allowed this relaxation are what are described as community premises which include church halls, village halls, community halls or other similar buildings. Service is on the licensing authority and the police which must include details of the management structure and copies of any hiring agreements.

Service of Applications by a Relevant Electronic Facility

Hastened by EU regulations, this came into force shortly before Christmas 2009 and allows applicants to serve their notices by email. All well and good, but the Licensing Act 2003 requires the application form to be sent with all documents, such as plans to a scale 1:100, as well as the prescribed fee. Two problems thus arise. Firstly, very few individuals will be able to scan a large plan and have the software or hardware to be able to send it electronically. Secondly, few licensing departments are set up to handle payments by either BACS or even credit card. So this is a bit of a non-starter at present, but no doubt will evolve over time.

Interestingly, once the systems are set up it will become popular as the only authority that has to be served is the council. They are then duty bound to forward the application onto to all the other responsible authorities. You can see why they are being tardy in introducing this.

The Policing and Crime Act 2009

This legislation was introduced by the Home Office and received Royal Assent last November. It introduced a variety of new powers which include:

- Making it an offence for under-18s to persistently possess alcohol in a public place.
- Extending the police's powers to issue 'directions to leave' to include young people aged 10-15.
- Amending police powers with regard to the confiscation of alcohol so they no longer need to prove that the individual intended to consume it.
- Changing the offence of persistently selling alcohol to

under-18s from three strikes within three months to two strikes in the same period.

This last one should focus the mind on anyone who has failed, for example, a test purchase as a subsequent failure within three months could result in a court appearance with a potential fine of £10,000 and a review of the licence.

Councillors will now be able to call for a review of a premises licence at their own volition without the need to engage a responsible authority to take action.

From 6 April 2010, three new mandatory conditions will be added to all premises licences (On trade only) authorising the supply of alcohol which are:

- Banning irresponsible promotions, such as “all you can drink for £10” or “women drink free” deals, that encourage people to drink quickly or irresponsibly.
- Banning “dentist’s chairs” where drink is poured directly into the mouths of customers, making it impossible for them to control the amount they are drinking.
- Ensuring free tap water is available for customers, allowing people to space out their drinks.

From October 2010, two further mandatory conditions will be added:

- Ensuring small measures of beers, wine and spirits are made available to customers. Of significance will be the need to offer 125ml measures of wine as well as the more usual 175ml or 250ml.
- Ensuring that all those who sell alcohol have an age-verification policy in place, requiring them to check the ID of anyone who looks under-18 (applies to both Off & On).

So, the supermarkets can continue to sell alcohol below cost price and it’s no surprise that the On trade feel demonised by this Government. Frankly, most, if not all, premises licences already include conditions relating to accepting ID and may go further to include the Challenge 21 or Challenge 25 schemes. Of note is the requirement that the only acceptable ID will be documents displaying a holographic mark (such as PASS), photograph and date of birth which means that the myriad of dubious ID obtained from the internet will not be comply with the condition.

Licensing of Lap Dancing Clubs

These operations are currently licensed under the Licensing Act 2003 in exactly the same way as a café, corner shop or bar would be. Much concern has been raised as to the difficulty of local residents objecting to the grant on the basis of moral grounds.

To overcome this, a new regime of local authority licensing for such premises as a “sexual entertainment venue” is to be introduced from 6 April 2010, with a twelve month lead-in period. There will, however, be no grandfather right protection for established operators so

it will be interesting to see how councils cope with this tricky situation.

In truth, no one actually knows how many such clubs exist as there are literally thousands of premises, probably your nearest pub, that could lawfully carry out adult entertainment under the authority of its current premises licence.

The Crime and Security Bill

Currently before Parliament, if enacted this will give local authorities the power to impose blanket bans on the sale of alcohol after 3:00am in entire streets or city centres affected by alcohol-related anti-social behaviour and disorder.

This ban would operate from 3:00am to 6:00am in respect of all premises selling alcohol, including pubs, bars, clubs, supermarkets and convenience stores. It could be imposed all week or only on particular days of the week. Councils would need to show that the restriction was necessary to prevent crime and disorder or public nuisance, or to promote public safety.

If a council proposed to use this new power, it would first invite views from everyone affected, including local residents, the police and licence holders and if necessary, it would hold a public hearing before making a final decision.

Further proposals for the Licensing Act 2003 (“LA”)

There is a proposal to amend some of the relevant offences listed in Schedule 4 of the Act. These include a whole host of offences under Acts that were repealed by the LA 2003. The obvious example is any offence under the Licensing Act 1964. As five years is about to pass, then it is more than likely that these will shortly become spent convictions and so are not relevant. So it seems very sensible to clear the decks.

Equally, there are a number of offences that were left out of the reckoning especially those starting with the words “Conspiracy to...” or “Attempt to...”.

Additionally, “Failure to co-operate with a preliminary test” under the Road Traffic Act 1988, or to put it another way refusing to take a breathalyser test, seems logical to include as a relevant offence.

And how about the idea of including being “Drunk and Disorderly” as a relevant unspent offence? That probably widens the net a bit!

Proposal to exempt from the Licensing Act 2003 small live music events

This would apply to licensed or unlicensed premises which would be subject to some strict conditions:

- The performance has to take place wholly inside a permanent building, so would exclude marquees etc.

- The audience does not exceed 100 persons who must be accommodated inside the building.
- The performance does not take place between 2300 and 0800.
- The exemption is subject to a revocation procedure if problems arise in connection with exempt live music performances.

Unlicensed premises will not have to apply to the licensing authority as they will automatically be exempt if they comply with the conditions. For licensed premises where authority has already been obtained for live music, it is more than likely that the entertainment will be subject to conditions e.g. to prevent public nuisance by a noise limiter.

Potentially, an application may be served under the Minor Variations procedure to have those relevant conditions removed which would at least put you on a level playing field with those unlicensed premises which are claiming exemption. This could clearly be a contentious issue with environmental protection officers who may well have asked for these conditions in the first place.

Note that the only restriction is the number in the audience at any one time, and not the style of music, the number of performers in the band, or whether they are amplified or not. Quite why live music before an audience of 101 persons is licensable, but 99 is not, will be one of the many unsolved mysteries surrounding the Act.

Proposal to clarify the definition of entertainment facilities

Picture the scene - your pub has a piano that is sitting in the bar but is very occasionally used for some incidental music by a member of the public. It is generally accepted that this is not regulated entertainment needing authority, but what about the provision of the piano itself. Technically, that is providing an entertainment facility which is licensable despite it only being used for incidental non-licensable music. The proposal is to lump the two together so they are both exempted.

And now for some better news...

Consultation has concluded for yet more amendments to the Licensing Act 2003; although in our view most of these at least seem sensible.

- At present, each licensing authority, and there are nearly 400 of them, are obliged to publish a licensing policy at three-yearly intervals. This requires extensive consultation, consideration of any responses, making any subsequent changes, getting it passed by the full council and then publishing it. The proposal is that they can amend their policy at any time but only if they need to.
- The current legislation states a licence lapses if the premises licence holder dies (if an individual) or becomes incapable through insolvency (both for an

individual or a business). The licence can be reinstated if an interim authority or a transfer application is made but these applications have to be served within seven days. In truth this means, say, a grieving widow has less time to protect the licence than to arrange the funeral. This was by any standard draconian, and the only remedy was to apply for a new licence with all the cost and effort required. In the meantime, the premises were effectively out of action for at least 28 days. The proposal is that the seven day period be extended to 28 days but note that the licence cannot be used until the application is served when it will be reinstated.

- At the moment, service of a Temporary Event Notice (TEN) requires at least ten working days' notice to the police and licensing authority. The police have only 48 hours to object on the grounds of crime and disorder from the point of service. So if the notice is left at an unmanned police station on a Friday evening, by the time they actually read it, it will be too late for them to take any action. So, not surprisingly, the police are asking for more time and the Government are proposing to allow them three working days to lodge an objection.
- The notice period is inflexible for the user as well. You might well apply for an event that is rained off and postponed until the next weekend. You will be out of time to serve the notice again and find yourself unable to carry out any licensable activity. So the proposal is that the police will be able to approve a late-issued TEN up to three working days before the event is planned.

And one for the future?

The Home Office has been experimenting with safer pint glasses under the trading names of "Glass Plus" which has a resin coating on the inside preventing shattering of the glass and "Twin Wall" which has a sandwiched membrane similar to a laminated car windscreen. The Glass Plus glasses are to be trialled with major pub chains in the near future.

You can see where this is going. Are they more expensive than current glassware? You bet they will be!

So you can see that there are a number of changes in the offing, and please bear in mind that some of the consultations may come to nothing. But you can probably see a theme developing, largely driven by the Home Office rather than the DCMS who are supposedly responsible for licensing in the UK.

We should also remember that we are in an election year so anything might happen over the next few months. Let's hope that there will be some licensed premises still trading where we can celebrate or commiserate as the case may be!

If you would like to speak to anyone regarding this update, please contact Brian Hardie on 01603 756426 or brian-hardie@birketts.co.uk

Birketts LLP

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Registered office:
24-26 Museum Street
Ipswich
IP1 1HZ
t 01473 23 23 00
f 01473 23 05 24

Kingfisher House
1 Gilders Way
Norwich
NR3 1UB
t 01603 23 23 00
f 01603 23 05 33

Daedalus House
Station Road
Cambridge
CB1 2RE
t 01223 32 66 00
f 01223 32 66 29



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