

## ***LICENSING ACT 2003 – IMPLEMENTATION REGULATIONS***

- The Government has finally published the draft regulations to implement the 2003 Licensing Act. The consultation sets out proposals for application forms and processes for personal and premises licences, the procedure for hearing contested applications and the provisions for the transition from the existing to new regime.
- The consultation period will run for 8 weeks, after which time the final regulations will be laid before Parliament. Although the regulations have to be formally approved by both the House of Commons and House of Lords, this is a technicality as they cannot be amended and can take effect from the time they are laid. Nevertheless, the timetable is tight and will mean that the final details will not be confirmed until late Nov/early Dec.
- This note summarises the key proposals set out in the regulations and highlights some of the concerns raised by the drafting. The *ALMR* will be responding to the consultation processes making these points, but operators' views are welcome on the practicalities of managing the proposed procedures.
- In the following text, the conversion of existing licences is dealt with under the section headed "transitional provisions". All references to personal and premises licence applications and procedures throughout the rest of the document relate specifically to new applications made after the second appointed day.

### ***Transitional Provisions***

- The Government has confirmed that the first appointed day will be 7<sup>th</sup> February 2005. This marks the start of the transitional period during which existing licences may be converted into new ones. The new licences will not take effect until the 2<sup>nd</sup> appointed day. This has yet to be confirmed, but is widely expected to be November 2005.
- During the transitional period between the two dates, existing justices licences can be converted into new personal and premises licences. The consultation document sets out the processes, forms and procedures for effecting this. Separate forms are used if the applicant wants to vary any existing terms and conditions.

### ***Conversion***

- There are standard forms for the conversion of existing licences, including a standard form of words giving the consent of the existing holder of the licence if the new premises licence is to be held by a company. The application for conversion must be accompanied by existing licences, certificates, the relevant fee and a plan of the premises. The document states that this must be in a scale of 1cm:1metre, unless the licensing authority allows a variation to this.
- The Licensing Act requires all conditions attached to existing licences to be reproduced when the new premises licence is granted. This applies also to any effective restrictions imposed on the use of the outlet eg special hours certificates. The application form requires the applicant to list their existing conditions but to allocate each to the promotion of the licensing objectives. This is unduly onerous and bureaucratic for applicants and implies the need for an operating schedule.
- Applications to vary will need to meet the same requirements as new applications.

### ***Provisional Statements***

- Provisional licences granted under the existing regime do not qualify for grandfather rights unless they are converted to final licences before the 1<sup>st</sup> Appointed Day. However, the Act states that the licensing authority must have regard to the provisional grant decision when considering an application for a new premises licence. The regulations propose placing a time limit on that requirement of one year after the 2<sup>nd</sup> Appointed Day.

### *Personal Licences*

- Under the Act, an applicant for a personal licence must hold an accredited licensing qualification before the application can be considered. The consultation document proposes exempting certain people from this requirement – a person operating premises under a licence granted by the University of Cambridge or the Board of the Green Cloth or a member of the Vintners Company. Views are sought on whether others may be exempt from the requirement to hold an accredited qualification.
- The personal licence would be granted for a period of 10 years and would be an actual physical document in a standard form. It would include the holder's full name, a photograph, a unique licensing number and the name of the issuing authority.
- There will be standard national application forms for new licences and their renewals. A sample draft form is set out in the consultation document. The application would need to be accompanied by 2 photographs a copy of the qualification and a Basic Disclosure certificate from the Criminal Records Bureau. Photographs must be 45mm x 35mm, taken against a light background, full face and no hat and be endorsed as a true likeness in the same way as a passport.
- The application form is relatively uncontroversial, but it does ask for all previous addresses where the applicant has not been resident at their current address for more than 5 years. This seems unduly onerous and, in an industry where people move around, may be complicated. A simpler requirement akin to credit checks may suffice.
- There is a section in the form requiring applicants to state that they are not already personal licence holders and do not have an application outstanding with the authority. This is designed to prevent people making multiple applications. This is replicated in the form for conversion of licences to new personal licences and this may cause some confusion.

### *Premises Licences*

- This section of the consultation document deals with the application forms, notices given and representations made in respect of premises licences. In particular it deals with applications for provisional statements, changing the DPS, variations to the premises licence, interim authority notices, transfers and reviews. There are similar provisions for club premises certificates, but these have not been detailed.
- The regulations initially add to the list of responsible authorities which must be notified of an application for a new premises licence and which have a statutory right to object to it. At the time of the passage of the Act, these authorities were listed as police, fire, child protection, the local body responsible for health and safety and environmental health and the local planning authority.
- For premises in Greater London, the Mayor of London is now included and for all applications the local Crime and Disorder Reduction Partnership is added. The practical

effect of this is to increase the number of complete copies of applications which must be served, adding to costs, but it will also increase the likelihood of representations.

- A different standard form is envisaged for all the above types of applications and notices. In most but not all cases, a sample is included. No standard forms are yet available for provisional statements, applications to vary the DPS, licence transfer
- In the case of all other applications, the form is very similar and at its heart is the operating schedule. This must set out:
  - a general description of the premises
  - the relevant licensable activities – there are a series of tick boxes
  - the times during which they will take place – there are separate boxes for each day of the week together with a box for non standard times or seasonal variations
  - other times when the premises will be open to the public but no licensable activity will be taking place – again highlighting seasonal variations or non-standard timings eg earlier opening for breakfast or later closing for drinking up
  - the name and address of the DPS
  - indicate the number of people expected to attend at any one time if more than 6,000
  - other ancillary activities which may give rise to concern re children eg gambling
  - the steps the applicant will take to promote the licensing objectives.
- In respect of the latter, no detail is provided but the accompanying notes state that the application form must be capable of enabling statutory consultees to judge the adequacy of the operating schedule. This suggests that local authorities will be free to make recommendations as to the type of peripheral information they would like to see included eg times of deliveries.
- The application for a premises licence will also need to be accompanied by a plan of the premises. The regulations set out standard formats and the plan must:
  - be drawn to a scale of 1 cm:1 metre unless an alternative scale is agreed with the licensing authority
  - show the entire boundary of the building “if relevant”
  - show the location of exits and escape routes
  - identify where the licensable activity will take place and where alcohol will be consumed (this bring in external areas)
  - show fixed structures which are impediments to movement
  - show the location and type of fire safety and other safety equipment
  - show the location of any kitchens
- DCMS officials had previously indicated that this standard format could be deviated from with prior agreement of the local authority eg additional information could be marked in by hand or a separate site plan could be submitted to show the external boundary. This appears to have been lost but will be particularly important during transition.
- All applications for a new premises licence, provisional statement or major variation must be advertised in two ways. Firstly by displaying a notice at the site for not less than 20 days after the application is submitted – pale blue, A4 size with black font of 14 point. Secondly, the applicant must publish a notice in the local press on at least 1 occasion within 5 days of submitting the application. The Government believes that a simple notice is insufficient to attract the attention of local residents but the requirement to advertise in the press as well will place a considerable cost burden on operators. It is interesting that this requirement for dual advertising is not replicated in planning.

- The licensing authority will be required to advertise if a request for a review of the licence has been submitted. This will be done in 3 ways: the display of a notice at or near the premises itself; in a local newspaper and on any website.
- A summary of the premises licence must be displayed prominently at the premises at all times. This need only include the name and address of the premises and the person or company holding the licence, the licensable activities, the times during which they are carried on and other opening times, the name and address of the DPS and the conditions relating to the admission of children. There is concern at the requirement to display the private address of the DPS.

### **Hearings**

- Where an application for a personal or premises licence is objected to – in the case of the former by the police and the latter by relevant bodies or interested parties – the local authority must hold a hearing. The consultation document sets out standard procedures governing the period of time during which a hearing must be held, the notice periods to be given and the information to be provided.
- However, crucially, local authorities will be given the right to determine the procedure to be followed at the hearing themselves. This will result in the current situation of different approaches being replicated and raises concerns about the judicious conduct of hearings. In addition, any irregularity arising from failure to abide by the procedural provisions will not automatically render the hearing void. This appears to give too much discretion to local authorities.
- The consultation document sets out clear time limits within which a hearing must be held. These vary according to the reasons why a hearing is necessary

<b>Time Limit</b>	<b>Circumstances</b>
20 working days beginning with the day after the end of the period during which representations may be made	Application for: Premises licence Provisional Statement Variation of Premises licence Change DPS Transfer of licence Review of premises licence Personal licence Convictions coming to light after grant or renewal of personal licence
10 working days beginning with the day after the relevant notice served	Review of premises licence following police closure order Conversion of existing premises/personal licence
7 working days beginning with the day after the end of the period within which the police may give a notice	Counter notice following police objection to temporary event notice
5 working days beginning with the day after the end of the period within which the police may give a notice	Cancellation of interim authority notice following police objection

- The Government is keen to understand whether these time limits are adequate preparation time, but it would be equally pertinent to highlight the delay to operators and the need for speedy decisions – especially since these limits are on top of the 4 weeks allowed for representations.
- The regulations also specify the notice of a hearing which the local authority must give. This is arguably more important to operators than the above time limits as this will be the

time frame for their internal preparations. In the case of police objections to interim authority notices and temporary event notices, the local authority need only give 2 working days' notice; for premises licence applications 5 working days' notice is required; and in respect of all other it is 10 working days' notice. In all cases the time limits refer to days prior to the start of the hearing.

- Following receipt of the above notice, all parties – applicant and objectors – will be required to let the licensing authority know whether they intend to attend the hearing, whether they will call witnesses or whether they consider the hearing to be unnecessary. This information is required to be served either 2 or 5 working days before the hearing. However, objectors can withdraw their representations no later than 24 hours before the start of the hearing.
- The licensing authority is only empowered to dispense with a hearing if all sides agree that it is unnecessary. In all other cases, a hearing will be held even if in the absence of some or all parties. However, if a party has failed to notify the authority that they do not intend to attend, then the hearing may be adjourned.
- It may be more appropriate for cases to be dismissed if all objectors fail to attend, particularly given the fact that the regulations appear to make no provision to enforce objectors to notify if they don't intend to turn up. The ability to withdraw representations the day before a hearing seems inadequate given that operators will have already committed substantial time and resources to prepare.
- The local authority has discretion to extend any of the above time limits where it considers it to be “necessary to the public interest”. It is not clear what would be meant by this, but it would principally be used to adjourn or defer hearings until after the 4 week period if committee members were not available and/or applications had not been processed in time. This discretion needs further clarification and must be circumscribed to prevent abuse and unnecessary delay.
- The local authority will not necessarily be obliged to determine the outcome of the application at the conclusion of the hearing. They must do so in the case of objections to temporary event notices and reviews of premises licences following closure orders. In all other cases, they must make their determination within 5 working days after the hearing.

### ***Electronic communication***

- The draft regulations do make provisions for any applications, notices or representations to be made electronically provided it can be reproduced and is with the agreement of the individual on whom it is to be served. Operators will therefore need to check with local authorities that they are happy to receive electronic communications and vice versa.
- The notice will be deemed to have effect from the time it is received by the recipient but if it is to be accompanied by a fee or plan or other documentation, then it is only deemed effective from the date on which those documents are received. This raises particular concerns about notices submitted outside working hours which are required to have immediate effect eg interim authority, changes to DPS etc and will need clarifying.