

LICENSING REFORM – THE ANSWERS FREQUENTLY ASKED QUESTION

THE LICENSING ACT 2003

The Licensing Act 2003 was formally adopted in November 2003 but will not be fully effective until later this year. It introduces a dual licensing regime, licensing outlets and individuals separately for the first time. From 7th February to 7th August, existing licensed businesses will be able to apply to convert their current licences to new permissions. The licences will not take effect until the 2nd Appointed Day – the date of which has yet to be determined, but it will not be until 7th November at the earliest.

PREMISES LICENCE

Do I need a licence?

The new Licensing Act lists four activities. In brief, these are:

- The sale by retail of alcohol;
- The supply of alcohol by private members clubs;
- The provision of regulated entertainment;
- The provision of late night refreshment.

If your outlet provides one of more of these activities, then you will need a premises licence. It is an offence to carry on any licensable activity without such an authorisation.

What is regulated entertainment?

Under the new licensing regime, the concept of a separate public entertainment licence will disappear. Under the new regime only a single authorisation will be needed to supply alcohol, provide regulated entertainment, such as a performance of live music, or provide late night refreshment or any combination of these activities. Six existing licensing regimes will be integrated into one, cutting a stroke significant amounts of red tape.

The definition of regulated entertainment covers the provision of entertainment or of entertainment facilities. The descriptions of entertainment in the Licensing Act are:

- the performance of a play;
- an exhibition of a film
- an indoor sporting event;
- boxing or wrestling entertainment;
- a performance of live music (except incidental music);
- any playing of recorded music (except incidental music);
- a performance of dance;
- entertainment facilities such as a dancefloor, karaoke machine or function room

Hypnotism, live sports broadcasting, comedy performances and traditional pub games have all been deemed not to constitute regulated entertainment. Furthermore, to be "regulated entertainment" the entertainment must take place in the presence of an audience and provided in order to entertain that audience.

What about the two in a bar rule?

Under existing licensing law, outlets with a justices licence in force can provide limited entertainment without the need to hold a full public entertainment licence if there are only two performers. The 'two in a bar' rule is being discontinued and in future, such outlets will need to specify that they will be providing regulated entertainment in their premises licence.

What is late night refreshment?

Late night refreshment is the provision of hot food or drink for consumption on or off the premises between the hours of 11pm and 5am. Although brought in to licence the activities of take aways and food stalls, it would also apply to many restaurants, pubs, bars and cafes. If you currently have a PEL, supper hours or special hours certificate then you have a grandfather right to provide late night refreshment.

APPLICATION PROCESS

How do I obtain a new premises licence?

If you are providing one or more licensable activities, then you will need a new premises licence to carry on trading once the new regime takes effect. Holders of existing justices licences, accompanying certificates and PELs have grandfather rights which allow them to automatically convert all their existing permissions and trading conditions into new licences. In order to convert an existing permission then the licence must be valid and in force on the first appointed day – 7th February 2005. If the licence is not approved before that date, then you cannot convert the permission and will need to apply for a full new premises licence.

At the same time, an application may be made to vary these existing terms and conditions to take advantage of the new flexibility. You apply to the local authority within which the premises is situated.

You may want to apply for a variation to change your licensing hours or drinking up time, to add in a new licensable activity – particularly if you currently use the 2 in a bar rule – or to remove any current conditions or ancillary restrictions

Who can apply for a premises licence?

The licence may be held by an individual aged 18 or over, a company, a partnership or other form of business.

If you are wanting to convert an existing licence to a new premises licence, then either the existing holder or holders may apply or the managing company. If the latter, then the consent of all the existing licence holders is required. There are standard national forms of consent.

How do I apply?

In order to apply to convert an existing permission into a new **premises licence**, or **club premises certificate** an application must be completed. Part A of the form converts existing permissions and Part B allows applicants to specify what variations they are seeking and to volunteer additional controls or conditions. At its heart is an operating schedule, setting out how the applicant intends to run and manage the business.

The application form must be accompanied by a plan, all existing certificates or certified copies the relevant forms of consent and a fee. It must then be copied to specified individuals and, if a variation is being sought, advertised on site and in the local paper.

Where can I get a copy of the forms?

The forms are available on the WLA website, and on request from Westminster City Council.

When can I apply?

The earliest date you can submit applications is 7th February 2005 and all applications must be made by 7th August. Westminster City Council is proposing a phasing strategy to help them manage the process and deal with applications more efficiently. It is your decision whether you follow this or not.

What can I convert under ‘grandfather rights’?

Any existing licence, certificate or permission that was in force on the 1st Appointed Day ie 7th February 2005 can be converted under the grandfather rights’ provision. This includes special hours and supper hours certificates. Similarly, any children’s certificates will be automatically converted. It also means that all businesses within Westminster have a grandfather right to start trading at 10am and 36 hour trading over the New Year’s Eve period even if they currently do not make use of them, since these rights have been agreed centrally.

What certificates do I need to send in?

Your application will need to be accompanied by a certified copy of all your existing licences, permissions and certificates. If you have the original licence, then you can get a certified copy from a local notary or solicitor. If you do not have the original licence then you will need to

apply to the magistrates court and/or local authority for a copy of it to accompany your application.

What form should the plan take?

National regulations specify the scale and content of the plans to accompany the application. The plan will form part of the licence once granted. It must be in a scale of 1cm:1m and include the following details:

- entry and exit points
- escape routes if different
- the entire boundary of the building if relevant
- locations of where different licensing activities take place
- location where alcohol is consumed, including external areas
- fixed structures or furniture
- raised areas or stages
- toilets
- kitchens
- lifts, escalators or stairs
- location and type of fire safety equipment.

Your existing plan may be sufficient to meet these requirements. There is no requirement to use colour coding, but if this or a legend would help to clarify any of the above, you may use if you choose.

My existing plan is in a different scale – does this matter?

You can vary the scale used by prior agreement with the licensing authority. This allows different scale to be used for very large outlets or for existing imperial plans to be allowable. Always check with your licensing officer first and your plan must meet all the other requirements set out above.

What is an operating schedule?

An operating schedule is a statement of how the business is to be managed and will form the central part of the application is you also want to vary your existing terms and conditions. It is a general description of the premises in layman not legal terms including the general situation and style of operation as well as the layout. It must also include a statement of the following matters:

- (a) the relevant licensable activities;
- (b) the times during which it is proposed that the relevant licensable activities are to take place;
- (c) any other times during which it is proposed that the premises are to be open to the public eg breakfast or wind down period, seasonal variations or non-standard hours
- (d) where the relevant licensable activities include the sale of alcohol, the name of the Designated Premises Supervisor
- (e) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both;
- (f) the steps which it is proposed to take to prevent crime, disorder and nuisance and to protect public safety and children in particular.

Steps to promote the licensing objectives are additional conditions or restrictions which you may volunteer in order to have your variation granted. During transition, these would be additional measures over and above your existing conditions and should only relate to the proposed variation. For example, if you want to trade later you may wish to provide door supervision during that extended trading period or to limit the time during which entertainment is provided.

Where do I send my application?

You apply to the local authority in which the premises is situated. If you are only seeking to convert your existing permissions then you must also copy the full application to the police. If you are also applying for a variation then a copy of the full application will also need to be

sent to the police, fire and planning authorities, local bodies responsible for environmental health, trading standards, health and safety and child protection. In both cases you will need to send a copy of the full application pack, including photocopies of the plan and certified copies of your existing licences. You have only 48 hours after lodging the application to copy it to these responsible authorities.

Will I need to advertise my application?

If you are also applying for a variation then you will need to display a notice of the application on or immediately outside the premises or at least 28 days, beginning with the day after the day on which the application is lodged. You must also advertise in the local press on at least one occasion within 10 days of the application being lodged. Both the notice and advert should provide a brief description of the variation being sought, contact details of the applicant and licensing authority where a full application may be viewed and the deadline for objections.

What conditions will be attached to my new licence?

When you convert your existing licence to a new premises licence all existing conditions will be transferred over at the same time, including any ancillary restrictions. You can apply to remove these conditions as part of a variation application. There are limited circumstances in which any new conditions can be attached at the point of conversion.

If you also apply to vary your licence, then in addition to these existing conditions, any control measures you include in your operating schedule will be automatically translated into conditions. If there are objections to your variation, then the licensing authority may impose additional conditions to address these concerns if they are upheld.

Do I have to renew my premises licence?

No. A premises licence is granted in perpetuity unless you choose to apply for only a limited period of time, it is suspended or revoked. There is an annual fee payable but this is to cover enforcement and inspection costs and is not a renewal fee.

How much will a premises licence cost?

The proposed fees for applying for a premises licence will be between £100 and £635 depending on the rateable value of the premises. However, city centre bars with a high rateable value will be charged a multiplier of this. This fee will be payable on a one-off basis at the time of application. An annual charge of between £70 and £350 will be payable each year on the anniversary of grant. Again, a multiplier is applied for city centre pubs and bars.

There will be an additional charge for venues with a capacity of more than 5000. During transition only, there will be an additional fee for any variation of a condition relating to alcohol sales. Full details of the charges is set out in a separate briefing note on the website.

What if my rateable value changes?

If your rateable value changes as a result of a successful appeal then you should notify the licensing authority. This may have an impact on the annual charge levied on your business but you will not be entitled to a rebate of additional charges levied.

When will I hear about my application?

Strict timetables for dealing with applications apply only during the transitional period. The licensing authority is required to make a decision on the application within 2 months. Your application to convert your existing permissions will be automatically deemed granted at the end of this period, but if you have not had a formal decision from the licensing authority on your variation application at the end of this period, then it will be deemed refused. You will then need to appeal to the magistrates court within 21 days for a full hearing.

PERSONAL LICENCE

Do I need a licence?

A personal licence authorises an individual to sell alcohol or authorise the sales of alcohol by others. If you sell alcohol, then at least one member of staff must be a personal licence holder. This individual is known as the Designated Premises Supervisor and is named on the premises licence. This provision does not apply to private members' clubs.

Do all staff selling alcohol need to hold a personal licence?

No. Only the designated premises supervisor is required to hold a personal licence. However, all sales of alcohol must be authorised by a personal licence holder. This does not mean that a personal licence holder must be on site at all times, nor is there any requirement for either the DPS or a personal licence holder to be present when a sale is made. Staff may be authorised to sell alcohol as at present, but the DPS or personal licence holder authorising sales remains responsible for all transactions carried out during the period.

Can I employ more than one Personal Licence holder?

Yes, but you can only have one Designated Premises Supervisor. This is essentially a commercial decision for the premises concerned but it is strongly recommended that more than one employee is a personal licence holder to give greater flexibility in meeting the two mandatory conditions for the sale of alcohol – that there should be a DPS attached to the premises and that all sales should be authorised by a personal licence holder.

What happens if the DPS leaves?

You must immediately notify the licensing authority that a new personal licence holder will be taking over the position of DPS. If you do not, then you cannot continue to sell alcohol until a new DPS is appointed and any sales will render you liable to a fine of up to £20,000.

If the person nominated as DPS on your premises licence application leaves before the new licensing regime takes effect, you will need to notify the licensing authority before 2nd Appointed Day.

If I have to nominate a DPS on the premises licence do I have to wait until the personal licence is applied for before applying for a premises licence?

If you are applying to convert your grandfather rights during the transitional period, then you can make both applications at the same time. However, it would be sensible for the proposed DPS to be a current holder of a justices licence since this application will effectively be rubber stamped. If you are applying outside transition, then it would make sense to wait until the personal licence is determined.

Can my regional manager be a DPS?

Yes. There is nothing in the Act which would prevent a regional manager being a DPS for an outlet, although this may be objected to by the police. It would not be recommended, however, since the DPS will be personally responsible for ensuring the premises licence conditions are complied with and for authorising the sale of alcohol. His licence may therefore be in jeopardy if he cannot maintain effective control over the outlet.

Can you be a DPS for more than one outlet?

Yes, but again it may not be recommended since the DPS does not have more than one personal licence and if that licence was revoked or penalised, it would affect all the outlets for which he was DPS. Remember, if you do not have a DPS with a valid licence then you cannot sell alcohol.

Can you have more than one DPS?

No. You can only have one DPS per outlet. This will normally be the manager or person with day to day operational control. It is a responsible position and an individual must consent to act in that capacity. It may be sensible to review the terms of employment so that taking on the role of manager automatically means that you consent to act as DPS and are obliged to notify the company immediately if you choose to resign that position.

How do I apply for a personal licence?

Any individual aged 18 or over can apply for a new personal licence, regardless of whether they are currently employed in the licensed trade, provided they have an accredited licensing qualification and can produce a clean criminal records bureau check. Separate criteria apply to those currently named on a justices' licence. There are standard national forms for use by existing licensees and for new applicants. These are available via the WLA website.

What supporting documentation do I need?

If you are applying to convert your grandfather rights, your application will need to be accompanied by a certified copy of the existing justices' licence on which you are named and two passport sized photographs. You will also be required to sign a declaration form disclosing any criminal convictions. If you are a new applicant, you will need to submit a CRB disclosure form, a copy of your qualification and two photographs.

Do grandfather rights apply for personal licences too?

Yes they do. All those named on a valid justices' licence on the 1st Appointed Day ie 7th February, will automatically be able to convert that existing licence to a new personal licence without the need for a licensing qualification or criminal records bureau check.

What happens if I add another person to my justices' licence after 7th February?

Providing they can make their application between 7th February and 7th August, then they will also qualify for grandfather rights. New licensees added after 7th August will not be eligible.

Are there any specific requirements for photos?

The photos must meet the specifications set out for passports. They should be 45mmx35mm, taken against a light background, full face with no hat or head covering. They will also need to be endorsed as a true likeness by either a solicitor, a person of standing in the community – police officer, bank or building society clerk, civil servant or religious leader – or an individual with a professional qualification. Anyone with a licensing qualification would be sufficient to meet the latter requirement so bar owners and operators should be able to certify each other's photographs.

Where do I send my application?

The application is made to the licensing authority where you are ordinarily resident, which may not necessarily be the same as the authority for the premises where you work. A copy should also be sent to the local police authority, who may object in exceptional circumstances.

Do I have to renew my personal licence?

Yes. A personal licence is granted for 10 years at the end of which time you will need to apply to the original licensing authority for a renewal. The licensing authority which granted the licence remains the relevant authority regardless of where you move to within the country. During this period, it is your obligation to ensure that the licence is kept up to date – that the licensing authority is notified of any change of name and address as well as any relevant convictions.

How much will a personal licence cost?

The application fee is £37, but applicants who are not eligible for grandfather rights will also need to add the cost of a licensing qualification and CRB check to this amount.

When will I hear about my application?

Strict timetables for dealing with applications apply only during the transitional period. Your personal licence is deemed granted if you do not hear to the contrary within 3 months.