

NEW YEAR'S EVE TRADING

There has been some confusion about trading hours over the New Year's Eve period, with the trade press and even some local authorities claiming that, unless trading hours are specifically addressed on your licence, then outlets will have to close as normal on New Year's Eve.

With the advice of our legal team, we separate fact from fiction to bring you the most authoritative guidance. However, this can only ever be generic and cannot deal with all individual circumstances – some licences will be issued with specific conditions which may differ from the general approach set out below. You should always seek separate legal advice and our honorary solicitors are available to deal with specific queries.

Converted Licences

- Trading hours for New Year's Eve were deregulated in 2001 when the Government introduced new legislation which automatically gave licensed premises the right to trade from the end of normal permitted hours on New Year's Eve to the start of normal permitted hours on New Year's Day without the need for special permission.
- Premises which had a liquor licence have therefore been allowed to sell alcohol for up to 36 hours since 2001. Those premises with a Public Entertainment Licence were also able to provide entertainment outside their normal permitted hours on New Year's Eve. This extension became part of the normal licensing hours granted under the 1964 Act
- Because the right to extended trading was granted by Parliament in 2001, it became an embedded right on the licence and should therefore have been carried over when these licences were converted under the new Licensing Regime. Unlike other extensions such as supper hours certificates or special orders of exemption, it did not need to be specifically claimed on conversion as it was automatically carried over.
- New Year's Eve hours are not specifically dealt with in many licences and as noted above, some licensing authorities are unclear as to whether and how New Year's Eve should be dealt with. The legal advice obtained by the WLA is clear – even if your licence makes no reference to New Year's Eve hours, you can rely on the extension granted to all licensees in 2001.

Variations

- Some licences were varied at the same time as being converted. The variation does not affect the fact that extended hours of New Year's Eve were an automatic and embedded right under the old regime and therefore carried over into the new.
- In many cases, licensees included New Year's Eve in their operating schedule. If you did so and referred simply to the 2001 deregulation order, then you will again have an automatic right to 36 hour trading. However, if you referred to specific hours in the operating schedule eg an extra hour on New Year's Eve or closure at 3am, for example, then you cannot rely on the automatic extension and must trade according to the conditions on the licence.

New Licences

- Applications for new licences made after February 2005 cannot rely on the automatic extension to hours granted in 2001 and would need to specify hours for New Year's Eve separately on their operating schedule. If you did not do so at the time of application, then you must close at the end of normal trading unless you have applied for a Temporary Event Notice.

Private Entertainment

- The right to provide private entertainment without restriction on hours was also an embedded right under the old licensing regime. Existing licences which have been converted will therefore be able to provide private entertainment at any time on New Year's Eve without the need for specific permission.

What to do next

- Check your licence and scrutinise it carefully. In most cases, converted licences issued by Westminster will refer to the normal permitted hours on New Year's Eve to the start of permitted hours on the following day. This carries over the right to 36 hour trading and means that your licence explicitly gives you permission to do so.
- Contact the local authority if your licence does not refer to New Year's Eve or does not refer to the correct time eg it explicitly refers to your normal permitted hours and your licence was not subject to a variation application. You should seek legal advice to make sure that the hours set are incorrect and have not been specifically applied as a restriction.
- Tell the local authority in writing that your licence is incorrect and needs to be amended. You are unlikely to get the matter resolved before New Year's Eve but you may get a comfort letter and in any case your correspondence is evidence that the matter is in dispute should you receive a licensing visit on New Year's Eve.
- Brief your staff. The police are due to be out in force over the festive period and particularly on New Year's Eve. They are requesting a curfew of 1am and are therefore likely to scrutinise and challenge extended opening. Make sure that you and your staff are confident of the conditions on your licence, this briefing and any legal advice you may have obtained

More help and information

- If you are unsure of your licence conditions or trading hours for New Year's Eve and want further help and advice, please contact our honorary solicitors, Jeffrey Green Russell.