



*The Association of Licensed Multiple Retailers*

***LICENSING ACT 2003***

*A Briefing Paper for Members*

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## INTRODUCTION

- Having been scrutinised by the Houses of Parliament over the course of this year, the Government's Licensing Bill was formally approved on Tuesday 8<sup>th</sup> July and received Royal Assent, becoming an Act, two days later.
- The initial Bill that was published in November has been substantially amended during its passage through the Houses of Parliament, and this note provides an update on the new Act's key provisions and the changes that have been made.
- Although the Act has now been adopted, it will take some time for its provisions to be implemented and the Government will need to publish draft regulations to turn the legal clauses into a practical new licensing regime. Guidance to local licensing authorities will also need to be published and agreed. This means that much of the detail of how the new regime will operate in practice has still to be resolved. The remaining outstanding issues are noted at the end of this briefing paper.

## LICENSING OBJECTIVES

- The objectives of the new regime are fourfold and carry equal weight:
  - the prevention of crime and disorder
  - the protection of public safety
  - the prevention of public nuisance
  - the protection of children from harm
- These are the only issues which are relevant to the consideration of any application and the only conditions which may be applied to premises licences must relate directly to their attainment.
  - Crime and Disorder: the police will take the lead here but the focus will be on drugs, violence and antisocial behaviour. Measures which the Government considers may be imposed as conditions in this area include CCTV, requirement for all glass to be toughened, a ban on sales in bottles, Pubwatch or other communication schemes.
  - Public Safety: this is principally concerned with the physical safety of those using the premises and not health, hygiene or cleanliness. Conditions in this area may include safe capacity limits, checks on fire equipment or a requirement for safety equipment to meet certain standards, door supervision.
  - Public Nuisance: there was some debate as to the definition of nuisance and it is clear that it retains a broad definition rather than the narrow definition included in planning law. Nuisance is a subjective term but decisions must be taken objectively about the impact of licensable activities and premises on people living, working and sleeping nearby. Conditions will normally relate to the control of noise, light pollution and possibly noxious smells emanating from the outlet.
  - Protection of children: protection in this context relates to moral, psychological or physical harm eg access to explicit films or to premises with a strong element of gambling, adult entertainment or those with a history of drug offences or under age sales. Concerns about the access of children to pubs and bars have largely been dealt with by the introduction of statutory controls (see below), but additional conditions may still be imposed under this objective to impose age limitations on under 18s or under 21s, to restrict the hours that children may be present or to exclude them from parts of the premises.

## LICENSABLE ACTIVITIES

- The Act provides for a unified system of regulation for the sale and supply of alcohol, provision of certain types of regulated entertainment and the provision of late night refreshment. All of these activities will be classified as “licensable” and can only be carried out on licensed premises.
- A single licence will cover an outlet wishing to provide any or all of these activities, but they will need to specify the details of their offering in an operating schedule attached to the licence.
- *Sale or supply of alcohol:* following a Government amendment off-licence sales by clubs to their members will not be a licensable activity. Supply of alcohol in wholesale quantities to the public will be licensable for the first time.
- *Late Night Refreshment:* the existing regime is being deliberately tightened to require the sale of any hot food or hot drink for consumption on or off the premises between 11pm and 5am. Although the intention is to cover take away outlets and cafes, it may also catch pubs and bars who wish to remain open longer but which do not sell alcohol after 11pm.
- *Regulated Entertainment:* The Government’s basic stance has been that activities which do not need to be licensed under the current regime will not need to be licensed under the new regime. Comedy shows, hypnotists acts and the broadcasting of sport on TV therefore all remain unlicensed.

In order to qualify as a licensable activity, entertainment must be public, take place in the presence of an audience and be provided for the purpose of entertaining that audience. Whether or not a specific event does fall within the definition will initially be for the licensee to determine when drawing up his operating schedule but will ultimately be for the courts to decide.

The Act specifically classifies the following as entertainment: playing of live or recorded music, performance of dance or plays, exhibition of a film, indoor sporting event, boxing or wrestling. The following are not considered to be entertainment for the purpose of the Act and will not need to be licensed – comedy shows, hypnotists acts and the broadcasting of sport as well as certain types of music. Morris dancing also falls outside the scope.

Entertainment at a private event to which the public is not admitted is not licensable unless entrance is charged with a view to making a profit. This means, for example, that a wedding reception in a pub not normally licensed for live music would nevertheless be able to have a band without the event needing to be licensed.

Spontaneous entertainment provided solely for the enjoyment of the performers is not caught by the Act so a licensee would not be in breach of their licence if a group of individuals started to sing or perform a folk dance in the pub garden. Depending upon how it is used, karaoke machines may fall outside the scope of the Act if they are provided in the same way as other pub machines for an individual’s entertainment. Organised karaoke nights attracting an audience and would require a licence.

Pub games will also not need to be licensed in the majority of cases but if events are staged to attract an audience eg major tournaments, are advertised and are considered a draw in their own right then they will fall within the definition of indoor sporting events and will need to be licensed.

- Live Music: although live music is a licensable activity, the Government has introduced a number of concessions in this area which mean that, in certain circumstances, it will be exempt or be only partially regulated.

Incidental music will be exempt from the Act. This means that jukeboxes, the playing of pre-recorded music or a live performance by a pianist in a restaurant or small band in a pub will not need to be licensed if it can be demonstrated that they are background music only and not an attraction in their own right.

The definition of incidental music has been left deliberately vague and it will be for local authorities to challenge whether music is incidental or not to the outlet or in a particular circumstance. Ultimately it may be for the courts to decide. A broad rule of thumb which the Government has applied is whether or not the entertainment is advertised and may draw in additional custom. If this is the case, then it would be unlikely to be classified as incidental. However, Ministers have accepted that a general advertisement of live music on a particular night would not prevent it being categorised as incidental but the naming of a group or individual probably would.

- Small Business Exemption: The treatment of live music in small venues is particularly complicated. The Act does provide for two different limited exemptions for venues with a capacity of less than 200. Capacity limits may be imposed by fire certificate or could possibly be self-certified in the operating plan on the recommendation of a fire authority. It would include staff and performers and if used to gain exemption, it is likely to be applied to the premises at all times.

The first exemption relates specifically to pubs providing live music and dance and relates specifically to the performance of both. Qualifying outlets would still need to be licensed to provide entertainment and refer to the provision of music and dancing in their operating schedule. However, any conditions relating to public nuisance ie noise or the protection of children would be suspended for the purposes of entertainment. This means that the licensing authority would only be able to take public nuisance or protection of children into account in respect of alcohol sales. The licence would be reviewable if a nuisance was caused and the conditions could be imposed if this was found to be the case.

The second exemption relates to any venue providing unamplified live music. Again, the venue would still need to be licensed and would need to specify that it would be allowing live music, but all conditions would be suspended in respect of unamplified live music provided between 8am and midnight. The conditions would only be disapplied during this time period. That does not mean that live music would have to be restricted to those times but that outside that timeframe conditions could apply. Conditions would, of course, be maintained in respect of sale of alcohol or other regulated entertainment. Again, the licence would be reviewable to tackle any abuse of the system.

## LICENSING AUTHORITIES

- The Act transfers all responsibility for licensing to local authorities – district, borough or county councils. In carrying out its licensing functions, the local authority must have regard to national guidance published by the Secretary of State. It may depart from this guidance if it sees fit, but this decision will be challengeable and there are high evidential hurdles to overcome to justify this approach.
- Each licensing authority must establish and maintain a register of all personal and premises licences applied for and issued, variations and transfers, endorsements and offences, interim authority and temporary event notices. The register must be publicly available and requests for copies of it must be met although a fee may be chargeable.
- Statements of Licensing Policy: a local policy must be drawn up before the new regime takes effect and must be reviewed every 3 years. Local authorities are likely to be given 6 months to develop their local policy statements from the date guidance is published by the Government. Guidance is expected to be published in September with local policies being agreed and in place by March 2004, although many local authorities are already pressing ahead with draft policies and are likely to have these agreed well in advance of this date.

Before drawing up or revising its policy, the local authority must consult the police, the fire authority, bodies representing local licence holders and bodies representing local businesses and residents. There is no obligation specifically to consult individual local licensees. However, the Act only sets down the statutory minimum consultation requirements and local authorities will be free to expand the list as they see fit, although they may not impose additional fees to cover the costs of doing so.

The Act provides no details of what this statement of policy should cover. Separate regulations will set out the process for determining and reviewing policies, as well as the preparation and publication of licensing statements. Guidance to local authorities will also provide further information. Such details as are currently available are set in the concluding section of this paper.

- Administration: each licensing authority must establish a committee to assess and process applications. The committee must consist of at least 10 and no more than 15 members of the council. The committee may delegate work to a number of smaller sub-committees (3 members) – possibly looking at different types of premises. There is nothing to prevent a councillor from continuing as a member of the committee even if the application relates to a premises in his ward, although normal local authority procedures for dealing with conflicts of interest would apply and they may choose not to sit on the committee for that application.

The authority is largely free to determine its own procedures, although subsequent regulations are likely to set out how proceedings should be handled, notice of meetings, quorum for meetings, public access and reporting of meetings.

The Act is premised on the basis that many licensing decisions will be purely administrative in nature and will not need political involvement. The licensing authority may delegate certain functions to licensing officers at their discretion. However, the Act does specify decisions which officers may not take – determinations of applications for a premises licence, provisional statement, variation of a premises licence where representations have been received, and where the police object to licence transfers, renewal of personal licences, interim authority notices, temporary event notices or variation of the designated premises supervisor.

## PREMISES LICENCE

- A premises licence authorises the use of any premises or part of a premises for licensable activities. An application may be made in respect of an existing building or one which has yet to be built.
- Application Process: An application for a new premises licence may be made by an individual aged 18 or over or a company which will be carrying on a business using the premises in question. The application is made to the licensing authority in which the premises is located, or in the case of premises straddling two local authority boundaries, the authority in whose area the greatest part of the premises is situated.

The application must be made on a standard form and be accompanied by a plan of the premises, an operating statement and a letter from the designated premises supervisor giving their consent to act in this capacity. The details of the application form, fee levels and information to be provided in the operating schedule will be set out in regulations which have yet to be published.

The operating schedule will set out the licensable activities being carried out on the premises, opening times and times during which licensable activities will take place, the steps to be taken to promote the licensing objectives and, where the premises is to be licensed for the sale of alcohol, the name of the designated premises supervisor and whether sales will be made for consumption on or off the premises or both.

Although not specified in the Act, the assumption is that the operating schedule will be prepared on a risk assessment basis, with provisions discussed with the police, fire authority and local authority officers to determine what steps would be necessary to meet the licensing objectives.

Supplementary regulations will set out how applications are to be advertised and the timetable for comment. It is expected that a short summary of the application, setting out the location of the premises, the proposed licensable activities, opening times and access for children will be advertised for 28 days in two local newspapers.

- Determining the application: The licensing authority receives applications and comments on them which may be made by affected individuals or organisations. Its principal role in the process is to resolve disputes if they arise.

Three distinct groups are eligible to comment on any application:

- *'authorised persons'* refers to bodies empowered to carry out inspections of premises such as police, fire authority inspectors, officers of the licensing authority and local authority health and safety and environmental health inspectors. They may inspect before the application is determined
- *'interested parties'* includes individuals or businesses in the vicinity of the premises or organisations representing their interests. These groups may nominate a representative to make comments on their behalf, such as a legal representative, friend MP or MEP or local ward councillor. In the case of the latter, if they are also a member of the licensing committee then they must disqualify themselves.
- *'responsible authority'* includes all of those public bodies classified as 'authorised persons' as well as the local planning authority, local child protection bodies or organisations and other licensing authorities in whose area part of the premises are situated. These organisations may also call for a review of the premises licence.

If no objections are raised to an application by any of these three groups, it must be granted, and granted in the terms sought.

If representations are made then the licensing authority must first determine whether they are “irrelevant, vexatious or frivolous” – if they are then they must be dismissed. It is for the local authority to make an objective assessment of the representations against these three tests. Guidance will provide further definition, but representations are irrelevant if they do not relate to the licensing objectives or relate to wider issues wider issues. Frivolous representations would be categorised by a lack of seriousness.

If they are satisfied about the representations, then the licensing authority should convene a hearing to attempt to resolve areas of dispute or concern and may, as a result of representations made, impose additional conditions on the licence. Regulations governing the way hearings are to be held will be published.

As a result of the hearing, the licensing authority may choose to grant the licence in the terms originally sought, impose additional conditions necessary to secure the licensing objectives eg to restrict opening hours, to exclude certain licensable activities from the premises licence or reject the application. Determination of the application must be made “forthwith” and written reasons for the decision provided to the applicant and those making relevant representations.

- Conditions: in granting the premises licence, the licensing authority essentially translates the terms of the operating schedule into conditions. If relevant representations have been successfully made, it may also choose to impose additional restrictions on the licence. Conditions must address areas within the direct control of the licensee, be proportionate and necessary to secure the licensing objectives.

There are three mandatory conditions for outlets licensed for the supply of alcohol:

- no sale of alcohol may be made where there is no designated premises supervisor (DPS) specified on the licence or that supervisor either has no personal licence or his personal licence is suspended. A DPS is a named individual, normally with day-to-day responsibility for running the premises. The objective in requiring a DPS to be specified on the premises licence is to ensure that the person in charge is easily identifiable to police, fire or local authority officers.
- every supply of alcohol must be made or authorised by a personal licence holder (not necessarily the designated premises supervisor). This does not mean that all sales must be made by a licence holder or that one must be present on the premises at all times, but authority must be demonstrable
- if one of the licence conditions states that door supervisors must be present at certain times then those individuals must be licensed

The Act itself makes no reference to types of conditions which are allowed and also makes no reference to opening hours. The draft guidance to licensing authority gives some indication of best practice and will set out a potential pool of model conditions.

- Duration of Licence: a premises licence is granted in perpetuity. It may, however, be applied for and granted for a fixed period. The licence may be revoked or suspended following a review or voluntarily surrendered by the licence holder. It would also lapse immediately when the licence holder dies suddenly, becomes bankrupt or mentally incapacitated or the business or organisation holding it is dissolved. In certain circumstances it may be reactivated, otherwise all licensable activities would have to cease immediately and the licence would have to be applied for afresh.

The premises licence holder is obliged to display a summary of the licence, including the name of the DPS. Failure to do so will be an offence.

## CHANGES TO THE PREMISES LICENCE

- *Register of Business Interests*: the licensing authority is obliged to keep the premises licence up to date and make a record of all decisions relating to it as amendments. Freeholders, leaseholders, legal mortgagees and those occupying the premises but who are not the licence holder will be able to register an interest in the will be able to notify the licensing authority of their interest in the premises. By doing so they will have the right to be notified of any entries on the register such as penalties against the licence, changes to the premises licence holder and interim authority notices. This will enable them to take action should the licence be in danger of lapsing.

Recording an interest in the premises must be done on an annual basis using a standard form and is subject to an annual administrative fee – this is likely to be in the region of £8-10. Registering an interest is not compulsory.

- *Licence Transfers*: businesses and individuals may apply to the licensing authority to transfer a premises licence to them, for example, if the outlet is sold to a new owner. The application must be accompanied by a form of consent of the existing licence holder. The DPS must also be notified of the application and its conclusion.

Notice of the application has to be given to the police. The police may, in exceptional circumstances, object to the transfer if it believes that it will undermine the crime prevention objective. They must provide a reasoned objection within 14 days and a hearing may be held.

The Act provides that the transfer can be given immediate effect from the making of the application to its determination. This ensures that there is no interruption to normal business during the application process. Application to transfer a licence simply changes the name of the holder, it does not alter the licence in any other way.

- *Variation of the Licence*: the premises licence holder must notify the licensing authority of any change in his name and address or the name and address of the designated premises supervisor. Although not a formal variation of the licence, the changes will be made and a fee is therefore payable.

Other variations of the licence would be applied for on a set form and a copy of the licence itself and any plans would need to be submitted. In the absence of any relevant representations, the licensing authority must grant the variation in the form requested. The procedures and principles applying to a variation application are the same as those for an application for a new premises licence. If relevant representations are made then a hearing will be held. The variation may then be granted, refused or modified.

- *Changes to the Designated Premises Supervisor*: An application to change the name of the DPS can only be made by the premises licence holder. It is expected that the name of the DPS will appear on an annex to the licence and only that annex need be submitted for variation. There is no possibility of other aspects of the licence being reconsidered at the same time. The application must be accompanied by a form of consent from the proposed new supervisor.

The application to vary the supervisor can have immediate effect which means that there is no disruption or threat to the business during the period that that application is being considered. There is also no need to obtain prior approval before putting in place a new supervisor. Notice must be given to the existing supervisor and also the chief of police. Where no representations are made, the application must be granted.

The police may, in exceptional circumstances, object to the proposed new supervisor within 14 days of receiving notice. In order to object, the police must have good grounds for determining that the appointment of that particular individual at that particular outlet would jeopardise the crime and disorder licensing objective. If an objection is lodged, and the licensing authority deems it is relevant, then a hearing must be held unless all sides agree that it is unnecessary. The application may then be granted or rejected. The premises licence holder must notify the existing supervisor of the outcome as soon as possible.

An individual may, however, apply to the licensing authority if they wish to cease to be recognised as the DPS for a particular outlet. Details of the form of notice to be used will be set out in separate regulations. If the DPS is also the premises licence holder, then he must attach a copy of the relevant part of the premises licence with his notice to the licensing authority. In other circumstances, the DPS must send a copy of the notice to the premises licence holder within 48 hours, asking them to send a copy of the premises licence to the relevant local authority within 14 days.

The notice again has immediate effect and it should be noted that it is an offence to sell alcohol if there is not a DPS specified, so it will be important to act swiftly in these circumstances.

- *Interim Authorities:* the premises licence has no fixed duration but it is held by an individual licence holder or business. In the normal course of events, the licence would lapse if the premises licence holder died suddenly, became bankrupt or mentally incapacitated or if the business or organisation holding the licence was dissolved. If a licence lapses, the business would have to close and cease trading immediately and the licence would need to be reapplied for afresh.

The Act therefore makes special provision for the continuation of a business and the reactivation of the licence. If the licence lapses because the holder has died, become bankrupt or is otherwise incapacitated, then either someone with a business interest in the premises or an individual personally connected to the former holder – personal representative, insolvency practitioner or someone with power of attorney - may apply for an interim authority notice. Such a notice would have to be given within 7 days and a copy sent to the police.

The benefit of an interim authority notice is that it has immediate effect from the point at which the licensing authority receives it and therefore enables the business to continue trading. Its effect would be to reinstate the licence for a maximum period of 2 months to allow a formal application for transfer to be made and considered. During the period the interim authority notice is valid, the person originally notifying the licensing authority becomes the premises licence holder. The licence lapses again if, after 2 months, no application for transfer has been made.

Upon receipt of a notice, the licensing authority must send a copy of the premises licence to the applicant. The person making the application must then notify the DPS.

Again, in exceptional circumstances, the police would have the right to object to the individual giving the notice taking over temporary responsibility for the premises licence but they must do so within 48 hours of receiving a copy of the notice. In such circumstances a hearing must be held and the licensing authority may decide to cancel the interim authority notice if it feels that it is necessary to do so for crime and disorder reasons. This decision would be appealable and the premises licence would be reinstated during the appeal process.

If no interim authority notice is submitted, then an individual may still apply for a full transfer of the licence to him within 7 days. If successful, the licence would be reinstated from the time the licensing authority would have received the application and therefore there would be minimal disruption to the business. If the application was unsuccessful, the licence would immediately lapse again.

If no successful notice or transfer is made, then the licence lapses and licensable activities would have to cease. A fresh premises licence application would need to be made with the potential for different conditions being applied.

- *Licence Reviews:* The Act provides for premises licences to be reviewed at the request of a responsible authority such as the police or fire authority or an interested party such as a local resident. A request for a review may only be made in the light of problems arising at the premises in connection with any of the four licensing objectives. Licensing authorities may not initiate their own reviews of premises licences, but local authority officers such as environmental health may lodge a request for review.

The details of how an application for review must be made will be set out in separate regulations, but they will include a requirement for the applicant to notify the holder of the premises licence and the relevant authorities of the request; for the licensing authority to advertise the application setting out the time frame during which representations may be made.

The licensing authority must first determine whether the request for a review is allowable – is it relevant to the licensing objectives, vexatious or frivolous or is it repetitious. A repetitious representation is one that is identical or substantially similar to one made in an earlier application for review which has already been determined, one that has already been considered by the licensing authority when the premises licence was first granted or one that has already been dismissed as being vexatious, frivolous or irrelevant. In addition, the application may also be rejected if a reasonable interval has not elapsed since either the grant of the licence or an earlier review. The definition of a “reasonable interval” is left at the discretion of the local authority, but the Government does not believe that more than one review on similar grounds should be permitted within a period of 12 months save in exceptional or compelling circumstances.

Before deciding an application to review, the licensing authority must hold a hearing. As a result of this, it may take action against the licence if it finds it necessary. This may include varying a condition, removing the DPS, excluding a licensable activity or suspending the licence. These actions may be taken on a permanent basis or take the form of a temporary sanction of up to 3 months. The authority may decide to revoke the licence altogether. The authority may find that no action is necessary if it believes the allegations are untrue or unsubstantiated. Equally, if it believes that the problem alleged is not sufficiently serious to warrant using its statutory powers it may decide to warn the licence holder or request an improvement. Warnings should be issued in writing to the premises licence holder.

A review of the licence will normally follow automatically any action by the police to close down the premises for up to 24 hours on the grounds of disorder or public nuisance.

## PROVISIONAL LICENCES

- At present, if an outlet is not yet built, a developer or operator cannot apply for a full licence, they can only apply for a provisional licence which will give them some idea of the licensing conditions that will apply when the premises is trading. The Act provides for a similar system of provisional statements.
- It also enables an application for a full premises licence to be made before the outlet is built or completed providing those making the application are able to submit sufficient information about the proposed licensing activities and terms of business and named individual involved in the premises. Were any of these details to change in the future, the licence holder would apply for a variation of the licence – the most likely variation would be to change the name of the DPS.
- Ministers expect operators to apply for a full premises licence at the outset of development, with the provisional licensing regime only being used by more speculative developers. The provisional licensing regime would give them some security that a premises licence would be granted once the building work is completed and an indication of the conditions that would be applied when a full premises licence was applied for.
- The Act enables a person, aged 18 or over, who has an interest in the premises to apply for a provisional statement. In this context, “person” also means a business and could be a firm of architects or a construction company or financier. The application would describe the work to be done and the licensable activities planned for the completed premises. Again, separate regulations would specify the information to be provided, the application form and fee levels and the way in which applications would be advertised.
- The process for assessing the application mirrors that for a full premises licence application. Responsible authorities and interested parties may make representations and, if they do, a hearing must be held to consider them. If no representations are made, the provisional statement must be granted in the terms applied for.
- Once a provisional statement is granted, an individual or business would, at a later stage, apply for it to be converted into a full premises licence before the outlet begins trading. Under the existing regime, the conversion is automatic providing that the work has been completed according to the schedule of works submitted as part of the original application and the licensable activities remain the same. Under the new regime, additional comments and objections may be made by residents or responsible authorities in strictly limited circumstances.
- Representations will not be allowed if:
  - the application is in the same form as the provisional statement
  - the work has been completed in a satisfactory manner
  - the person could have made the same or substantially the same
  - representations when the application for provisional statement was made but failed to do so without reasonable excuse; and
  - there has been no material change of circumstances relating either to the premises or the area in the vicinity of the premises since the provisional application was made.
- Representations would be allowable in cases where the person was on holiday or in hospital when the original application was made or there has been new residential development in the area in the interim period.

## PERMITTED TEMPORARY ACTIVITIES

- The Act provides for a system of temporary premises licences to allow licensable activities to take place in premises or areas not normally licensed such as village halls or outdoor festivals. The notices allow the temporary sale of alcohol, provision of regulated entertainment or late night refreshment.
- Temporary event notices may also be used by licensed premises to give them temporary permission for licensable activities not specified in their operating schedule. For example, to open longer during for a major sporting tournament or to host a one-off disco. As such they replace the existing system of Special Orders of Exemption, but they should be used for genuinely one-off events rather than those which can be planned for such as Christmas or New Year.
- The most important aspect of the system of temporary event notices is that no permission is required for these events from the licensing authority, only the police may intervene to prevent a notified event from going ahead and there is no ability to impose conditions on the event.
- A temporary event notice can last up to 96 hours (4 days) and the maximum number of people attending at any one time must be less than 500.
- There are limits on the number of temporary event notices which can be given during any one year. A personal licence holder may give 50 notices for events not being held on licensed premises and a non-licence holder may give 5 notices a year. An individual premises – whether licensed or not – may only be used for 12 temporary events a year up to a maximum of 15 days a year. There must be a minimum of 24 hours between the end of one event and the beginning of another if the notice is given by the same person or relates to the same premises.
- Application Process: an individual wishing to put on a temporary event may give notice to the licensing authority in which the event is situated. The applicant must be aged 18 or over but need not be a personal licence holder.

The notice must be given on a standard form, with details of the licensable activities to be provided, the period during which the temporary event will be held, the times during that period when alcohol will be sold or entertainment provided, the maximum number of people attending at any one given time and whether the sale of alcohol will be for consumption on or off the premises. Where the relevant licensed activities include the sale of alcohol, the notice must also state that all such supplies must be made by or under the authority of the premises user.

The notice must be given to the licensing authority a minimum of 10 days before the event is due to take place. A copy should also be sent at the same time to the police. The licensing authority must record the notice in the licensing register and acknowledge its receipt to the applicant no later than the end of the first working day following the day they received the notice.

- Licensing Authority: the licensing authority only receives notice of the intention to hold a temporary event and has no ability to consider the merits of the application, accept or reject it. It can, however, issue a counter notice effectively preventing the event going ahead if it believes that any of the limits placed on the number of temporary event notices an individual or premises may apply for have been breached. The counter notice must be given no later than 24 hours before the event starts.

- *Police Objections*: the police have a limited right to object to the proposed temporary event notice if they believe that allowing the premises to be used in such a way would undermine the crime and disorder licensing objective. They must issue an objection notice to the applicant and licensing authority setting out their concerns within 48 hours of the temporary event notice being given.

It is open to the police and the individual holding the temporary event to liaise from this point and modify the temporary event notice to address police concerns. If such an agreement is reached, the police's objection notice is considered withdrawn. The modified notice will be deemed to have replaced the original notice and be effective from the date the original was submitted. This avoids a situation whereby the 10 day notice period needs to restart.

If the notice is not modified and the objection notice still stands, the licensing authority must then hold a hearing to consider the police concerns. The hearing can only consider issues related to crime and disorder, it cannot take into account possible public nuisance and may not uphold a police objection based on other grounds. At the end of the hearing the licensing authority may decide to allow the original notice to stand or uphold the police objection by issuing a counter notice preventing it going ahead. A decision must be taken at least 24 hours before the temporary event is due to start.

- *Inspections*: a constable or authorised licensing officer has a right of entry to the premises covered by the notice to assess the effect of the event on the licensing objectives. The police retain the power to close a temporary event without notice for up to 24 hours if it is disorderly or likely to become disorderly or causes a noise nuisance. This is the same power that applies to all licensed premises.
- *Miscellaneous*: the applicant must either ensure that a copy of the temporary event notice is displayed at the premises during the event or is kept at the premises by a nominated individual and is available for inspection on request. If the notice is lost, stolen or damaged, the applicant may apply to the licensing authority for a copy of the notice and their acknowledgement of it.
- *Special Occasions* In addition to the provisions for temporary permission for one off events, the Act gives powers to the Secretary of State to set national licensing hours for special occasions of exceptional international, national or local significance. Examples of events which might qualify for special treatment include the Golden Jubilee, VE Day celebrations, World Cup etc.
- Where the occasion is felt to be particularly significant, the Secretary of State has the power to issue an order setting licensing hours for all premises in a particular area or across the country for a maximum period of 4 days. The effect would be to suspend any restrictions on hours currently outlined in an operating schedule and enable automatic extended trading throughout the special occasion period. For example, the order might state that licensed premises could stay open until 1am, 3am or trade continuously over a 36 hour period as is the case with New Year's Eve.

## PERSONAL LICENCES

- A personal licence authorises an individual to sell or supply of alcohol. A personal licence is not required for establishments offering only entertainment or late night refreshment. A premises may be licensed for the sale of alcohol but unless a personal licence holder is associated with the premises, no sales can be made. It is mandatory condition of the premises licence that all alcohol sales must be made under the authority of a personal licence holder.
- More than one personal licence holder may be employed at the premises, but it is not necessary for all staff to be personal licence holders nor is there any requirement for a personal licence holder to be present on the premises at all times.
- Personal licences may be sought by any individual regardless of their current employment or business interests. The use to which the licence will be put is not a matter for consideration in the granting of a personal licence.
- Application process: an individual will apply for the grant of a personal licence to the local authority in which they are normally resident, but application may be made to another authority in exceptional circumstances. This licensing authority becomes the relevant authority responsible for the licence regardless of where the individual subsequently moves to.

The application would be made on a standard form and be accompanied by evidence of a licensing qualification and Criminal Record Bureau certificate. There will also be some mechanism for certifying identity, either as part of the licensing qualification process or by means of a certified likeness akin to that used in passport applications. Subsequent guidance and regulations will specify which qualifications are relevant, the application form and any additional information to be provided.

- Determining the application: the licensing authority must grant the licence if the applicant is over 18, possesses a relevant accredited qualification, has not forfeited a personal licence within the past 5 years and has not been convicted of a relevant offence. Equally, the application must be rejected if any of the first three conditions are not met.

There is some limited discretion in the case of unspent convictions for relevant offences. Relevant offences are numerous and are listed in Schedule 4 of the Act. They include not only licensing offences but range from major crimes of violence, possession of firearms or drugs and fraud to offences in areas related to licensed premises such as gaming, smuggled tobacco, food safety, drink driving, copyright infringement and passing off alcoholic brands.

If the applicant has a relevant conviction, the licensing authority must notify the police of this. The police will have 14 days to consider the matter and may object to the application if they feel that its grant would have an impact on crime. If the police do not object within this period, then the application must be granted.

If the police do object, the licensing authority must convene a hearing to consider the nature of the objection and any concerns. Whilst the Government has recommended that an unspent conviction coupled with a police objection should result in the application being refused, the licensing authority does have discretion to grant it in exceptional circumstances.

If an application is refused for any reason, the applicant will be entitled to an appeal. Similarly, if it is granted despite police opposition, the chief police officer will be able to appeal against the decision.

If an applicant is convicted of a relevant offence during the period his application is being considered, he must notify the licensing authority as soon as possible. The licensing authority will then notify the police in the normal way.

If a relevant conviction comes to light only after the licence has been granted, the licensing authority must again notify the police. The procedure for police comment, objection and consideration of the issues applies as it would during an application process. At the end of this, the licensing authority may decide to revoke the licence or allow it to stand. This decision does not have effect, however, until the end of the period allowed for an appeal or until the appeal is disposed of.

- *Duration & maintenance of the licence:* a personal licence is valid for 10 years unless surrendered or declared suspended or forfeit by the courts. If an individual wishes to give up his licence before the 10 year period expires, he must send the licence to the licensing authority which originally granted it and the licence lapses from the date on which it is received.

The issuing licensing authority is required to maintain a record of issues relevant to the licence. The licence holder is obliged to inform the authority of changes of name and address, for example. The Government rejected attempts to amend the Bill to set up a central licensing authority for the administration of personal licences, but has committed to working with the industry to establish a central database of personal licence holders. Once established, the central database will take on the obligation to keep the records up to date.

- *Renewal of Licence:* an individual may apply to renew his licence two months before his existing licence is due to expire. The original licence is deemed to continue to be valid even if the renewal is not processed within this 2 month period. The application is made to the licensing authority which originally issued the licence and must be accompanied by the original personal licence or a certified copy and an up to date photograph.

The renewal process should be automatic and there will be a presumption to granting a further licence. However, the licensing authority will take into account convictions for relevant offences which have been made in the intervening 10 year period. If any convictions do appear on the licence, the licensing authority will again be obliged to notify the police who may, or may not object to the renewal of the licence. The same process applies as in the granting of new licences.

- *Relevant offences:* convictions for relevant offences are not only relevant during the application process. Where a personal licence holder is charged with a relevant offence, they are obliged to present their personal licence to the court. If convicted, the court must notify the licensing authority of the conviction and may choose to impose a sanction against the licence over and above any fine or penalty due of for the offence. The court may order the forfeiture of the licence or its suspension for up to 6 months. Such a decision would be appealable to a higher court.

## OFFENCES

- The Act carries over many of the offences under the existing licensing regime and creates a number of new offences. There are also offences relating to rights of entry and inspection and non-compliance with administrative requirements. Many of these are set out in the previous pages and are not reiterated here.
- *Licensable activities*: it is an offence to carry on or attempt to carry on a licensable activity without the authorisation of a premises licence or to knowingly allow such an activity to be carried on. There is a separate offence of unauthorised sale of alcohol or keeping alcohol on the premises for unauthorised sale. The offences are punishable by a fine of up to £20,000 or 6 months imprisonment.
- *Drunkenness or disorderly conduct*: it is an offence to knowingly allow disorderly conduct on licensed premises or to knowingly sell or attempt to sell alcohol to a person who is drunk or allows alcohol to be sold to someone who is drunk. Proceedings under this offence could be taken against the DPS, premises licence holder or anyone working at the premises with an authority to prevent the conduct.

From a customer's point of view, it will be an offence to knowingly obtain alcohol for consumption on the premises for someone who is drunk or to fail to leave the premises when requested to do so.

- *Smuggled goods*: it is an offence to knowingly keep smuggled goods on licensed premises or allow them to be kept there. Again, the offence may be pursued against the DPS, premises licence holder or anyone with an authority to prevent the offence.
- *Children and alcohol*: Although the objective of the Act is to provide greater access to licensed premises by families, a major new series of offences have been introduced relating to children and alcohol.

There is, in effect, a new statutory ban on unaccompanied children (under 16) in premises exclusively or primarily used for the supply of alcohol and a ban on unaccompanied children in other on-licensed premises between midnight and 5am. It will be an offence for a member of staff, premises licence holder or DPS to allow an unaccompanied child to remain on the premises. It will be a defence to argue that you believed the child to be over 16 or that the individual accompanying them was over 18 and took reasonable steps to determine their age such as seeking proof of age, or no reasonable person would have assumed they were under age.

The legal purchasing age remains 18. For the first time it will be an offence to sell to someone under 18 wherever the sale is made and supply of alcohol to children in clubs as well as bootlegged sales will be covered by the offence. An individual will also be guilty of an offence if they knowingly allow the sale of alcohol to an individual aged under 18 and were employed in a capacity to authorise or prevent the sale. The due diligence defence set out above will apply in this instance as well.

It will remain an offence for a child under 18 to buy or attempt to buy alcohol unless this purchase is authorised by a trading standards or police officer. It will also be an offence to knowingly consume alcohol in on-licensed premises.

An individual will also be guilty of an offence if they buy alcohol on behalf of someone under 18 or allow the consumption of alcohol by someone under age. No offence will be committed, however, if the purchase is of beer, wine or cider and for consumption on the premises by an accompanied 16 or 17 year old with a table meal.

## POLICE POWERS TO CLOSE PREMISES

- The Act significantly extends the existing powers of police to order the closure of premises in certain circumstances – to close all premises in a specified area where disorder may be expected; and, to close individual disorderly premises.
- Guidance will be provided to the police in the exercise of this power, but it is not binding on them and they retain operational independence.
- *Closure of premises in an identified area:* where disorder is expected in a particular area or around a particular event eg a demonstration or a football match, the police may apply to the local magistrates' court for an order requiring all licensed premises to be closed for a period of not more than 24 hours. The application must be made by a senior police officer who is of the rank of superintendent or above and the police must demonstrate that the closure order is necessary to prevent disorder.

It is an offence to open in contravention of such an order and the police may use such force as necessary to ensure premises are closed.

The burden of proof falls on the police to satisfy the court on the balance of probability that their intelligence or evidence is sufficient to demonstrate that such action is necessary to prevent major disorder arising.

- *Closure of individual premises:* this type of closure is far more immediate and does not require court intervention. If a senior police officer of the rank of inspector or above believes that there is or is likely to be disorder on, or in the vicinity of a premises or the premises is causing a noise nuisance, he may order the closure of that premises without notice for a period of up to 24 hours.

There are certain tests which must be met before a closure order may be considered to be valid. The order must relate a specific identified premises and the disorder or noise nuisance must be directly attributable to that premises. It must also be absolutely necessary to secure public safety or to prevent the noise nuisance. If other means are available to deal with the situation they should be deployed. A closure order is designed to be a weapon of last resort. The police should also take into account the behaviour of the licensee or DPS in these circumstances.

The senior police officer authorises the order to be made but need not be present at the scene or indeed deliver the order. He can act on intelligence from officers and any constable may serve the order on the manager, designated premises supervisor or premises licence holder. The order comes into effect the moment it is served.

The order must be in writing and specify the premises to which it relates, the period for which the premises must be closed – the maximum is 24 hours but the order could be for as little as 30 minutes to clear troublemakers or up to closing time that evening – and the grounds on which it is made.

It is an offence for a premises to remain open in contravention of the closure order, punishable by a fine of up to £20,000 or 6 months imprisonment. However, there is no obligation to clear the premises only to cease all licensable activities. Indeed the police may wish to clear premises gradually to avoid further disorder.

The responsible senior police officer must, as soon as is reasonably practicable after a closure order comes into effect, apply to the relevant magistrates court for it to consider the order and any extension to it. He must also notify the licensing authority.

If the officer believes that the court will not be able to do this before the order expires, he may extend it for a further 24 hours but only if disorder or noise nuisance is likely to resume and closure is necessary in the interests of public safety.

The role of the magistrates' court in this instance is to determine whether the order is necessary on the grounds of public safety because of disorder or public nuisance because of noise and whether it should use its powers to maintain or extend it. The court may decide to revoke the closure order or any police extension to it, order the premises to remain closed for a period of time which may be up until the licensing authority has had an opportunity to consider the licensing implications and review the premises licence. The decision of the court may be appealed to the Crown Court.

- *Licence Review*: a licensing authority must review the premises licence following the issuing of a closure order. The review must take place and be concluded within 28 days of the notice being issued.

The review procedure mirrors that set out above in respect of reviews requested by local residents or responsible authorities. The licensing authority must, however, advertise the review and invite representations about it from relevant parties. A hearing will be held to consider these representations and the closure order itself. As a result of the hearing, the licensing authority may modify the conditions of the licence, exclude a licensable activity from the licence, remove the DPS, suspend the licence for up to 3 months or revoke the licence altogether. The decision will not take effect until the end of the period allowed for an appeal (21 days) or the conclusion of appeal hearings.

- *Police Liability*: the police are not liable for any damages caused as a result of issuing a closure order. Damages in this context means costs awarded by a court following a judicial review of a decision to close the premises. This means that if a decision to close is disputed, it can only result in the closure order or any extension being revoked after the event and no claim for loss of earnings may be made. The only exception to this is if the police officer issuing the order acted in bad faith in doing so or deliberately and wilfully failed to do something.

## APPEALS

- Parties aggrieved by decisions of the licensing authority may appeal to the magistrates court either on a point of law or the merits of the decision.
- Notice of intention to appeal has to be made within 21 days of the original decision being taken. Decisions do not take effect until this period has elapsed and are suspended if an appeal is launched until the outcome of the appeal is known.
- Appeals may be made against any decision, but the following gives an overview of the main areas set out in the Act.

An applicant for a premises licence may appeal against:

- refusal to grant a premises licence or provisional statement
  - refusal to grant a variation or transfer of a premises licence
  - rejection of proposed DPS
  - decision to impose conditions – appealing against conditions imposed or decision to restrict licensable activities
  - withdrawal of interim authority
  - decision to review the licence following a request
  - any decision taken as a result of the review following a request or a closure order
- An appeal may also be pursued by an interested party such as a local resident or a relevant authority, particularly the police, who made representations during the process. This will particularly arise where their objections have not been upheld:
    - granting of licence
    - decision to allow a variation – both against the variation as a whole or arguing that in granting it additional conditions should have been imposed
    - approval of transfer of premises licence – police only
    - approval of proposed DPS – police only
    - decision to impose conditions – arguing that different or additional conditions should have been applied
    - granting of interim authority – police only
    - failure to review the licence following a request
    - action taken as a result of the review of the licence
  - An applicant may appeal against a decision to refuse their application for a personal licence or licence renewal. The police may appeal against a decision to grant or renew a licence despite convictions for relevant offences and police objections.
  - Appeals relating to premises licences are made to the magistrates' court for the petty sessions area in which the premises concerned are situated. In the case of personal licences, the appeal is to the magistrates' court for the area in which the licensing authority which granted the licence is situated.
  - On determining the appeal, the court may dismiss it; substitute its decision for the one appealed against; remit the case to the licensing authority to dispose of it in accordance with their direction; make an order for costs as it sees fit.

## TRANSITION

- Although the Act has now been approved, it will take some time for its provisions to be granted and the new regime to take full effect. The date of introduction of the new regime has yet to be determined, but it is likely to be early 2005.
- As has already been noted, a great deal of additional legislation will be required to provide the details of how the new regime will work in practice – this will cover local authority procedures, application processes, fees, documentation, qualifications and the conduct of hearings. In addition, Guidance to licensing authorities on the exercise of their powers will also need to be published and approved. These documents are expected to be published in September 2003.
- Following this, local authorities are likely to be given a period of 6 months to put in place the structures to administer the new licensing regime, develop and consult on their local licensing policies and statements and establish licensing committees.
- The Act provides for a specific transitional period during which existing licences are converted to new personal and premises licences. This transitional phase is expected to begin in late March/early April 2004 and will last a minimum of 9 months but may be as long as a year. These dates will be confirmed in regulations this Autumn.
- The Government's decision to guarantee grandfather rights means that in all but the most exceptional circumstances, all existing licensed premises and licence holders will be automatically granted a new personal licence or premises licence on at least the same terms and conditions they currently enjoy.
- *Personal Licences:* all current holders of justices' licences will be entitled to apply for a new personal licence without the need to provide evidence of a criminal record check or of a licensing qualification. Where more than one individual is named on the licence they may all be converted into new licences.
- Applications will need to be made on a specific form and be accompanied by a copy of the existing justices' licence, a photo endorsed on the back as a true likeness and any statement of relevant unspent convictions. They will be automatically granted if the licensing authority is satisfied that applicants are existing licence holders and there are no objections raised by the police.
- If the applicant has relevant unspent convictions and the police have concerns that granting them a personal licence may undermine crime prevention, then they may object to the conversion of the licence within 28 days. This will automatically trigger a hearing and may lead to rejection of granting of the application.
- If the application is not dealt with within 3 months it is deemed granted.
- The applicant has the right to appeal against a decision not to grant and the police have a right to appeal against a decision to grant despite their objections.
- *Premises licences:* all existing licensed premises can apply to register their existing licence, permissions and conditions and convert them into new premises licences. At the same time they may apply to vary their existing trading terms to enable them to take advantage of longer hours or to disapply a condition, for example. The two applications are handled separately.

To convert the licence you must make an application within 6 months of the transitional regime starting. This will list all existing permissions, including extensions to normal permitted hours, special hours certificates, PELs, gaming permits and childrens' certificates held. All of these licences would need to be attached to the application together with a plan of the premise and the name of the person you want listed as DPS. The application would need to be copied to the police within 48 hours. The police may object if there is an appeal outstanding against revocation or rejection of application for renewal of the existing licence or if there has been a material change of circumstances which means that converting the licence would jeopardise the crime prevention objective. Such an objection must be lodged within 28 days and will automatically lead to a hearing. If the application is not determined within 2 months, then it is deemed granted.

If you wish to vary your existing terms and conditions – and conversion of the licence would see existing mandatory conditions such as a restriction on under 14s in bar areas also carried over – then you would need to submit a second application setting out the proposed variations. This application would be treated in much the same way as a normal variation, being advertised and with representations allowable from not only the police, but also local residents and other interested parties. Comments can only be directed at the proposed variations, however, and the licence itself or the guaranteed terms and conditions it contains may not be considered. If the application to vary is not dealt with within 2 months, the application is deemed rejected.

New premises licences may continue to be varied throughout the transitional period and once the new regime is operational.

The applicant may appeal against a decision to reject an application to convert or vary a premises licence and similarly the police may appeal against a decision to grant the conversion despite their objections.

- *Dual Licensing*: all licences granted during the transitional period will lie dormant until the new regime takes full effect sometime in 2005. The existing licensing regime will continue throughout that period and licensees will continue to apply to the local magistrates for new permissions or changes to the licensee. New licensees created during this period will be able to apply for a personal licence under the transitional arrangements and similarly new permissions granted could be rolled over as a variation of the premises licence.

All justices licences fall for renewal at the Brewster Sessions in February 2004 but will be automatically rolled over. all existing licensed premises can apply to register their existing licence, permissions and conditions and convert them into new premises licences.

If the existing licence is revoked after it has been converted, then the new premises or personal licence will lapse.

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**KN**  
Ealing  
July 2003