

AUTHORISATION OF SALES OF ALCOHOL

The Law

- The Licensing Act 2003 imposes a mandatory condition on all premises licences requiring every sale of alcohol to be made or authorised by a personal licence holder. This may be the Designated Premises Supervisor but could be any personal licence holder.
- This legal requirement has been the subject of much confusion and uncertainty amongst the trade and also police and licensing inspectors. The Government has taken steps to clarify what this condition means in practice.

What it means

- The condition replicates the situation under the old licensing regime whereby responsibility for all sales rested ultimately with the licensee and staff were given implicit permission to sell on their behalf.
- From a practical and operational perspective, what this means is that there must be an explicit act of authorization which can be referred to. This authorization must come from a personal licence holder – not necessarily the DPS – and be given to all members of staff.
- It also means that the personal licence holder giving the authority to sell alcohol retains responsibility for the actions of those thus authorised. It is in their interests, therefore to ensure that they are not too remote from the day-to-day management of the premises otherwise their licence may be in jeopardy.
- The Government has recently revised the Guidance it gives to licensing authorities and the police on this matter. This is important as it can be relied upon by operators if they find their actions being questioned during licensing inspections. For example, some police forces have claimed the condition requires a personal licence holder to be on site at all times.
- Guidance states that:
“This does not mean that the condition should require on the premises at all material times of the designated premises supervisor. Similarly the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make such sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol during the course of an evening, but may be absent at times from the premises when a transaction takes place.

“Authorisation” does not imply direct supervision of each sale of alcohol by a personal licence holder. Nevertheless, it seems reasonable to expect that authorization should be meaningful and properly carried out and no involve any abdication of responsibility.”

How do you demonstrate effective authorization

- **There should be an overt act of authorization:** It should take the form of a simple statement giving members of staff the authority to make sales.
- **Identify the individuals:** those authorised to sell alcohol should be clearly identified. There is no requirement to identify the person giving the authority, although this may be helpful.
- **Specify the activity:** The statement should clearly set out which activity is being authorised, namely the sale of alcohol
- It is recommended that a written statement is issued to all staff before they undertake any bar duties. This could be appended to an individual's contract of employment. However, authorization must be given by a personal licence holder and, given staff turnover and the need for authorization to be "meaningful", this may not be considered to be sufficient.
- Authorisation can be given individually or collectively, and operators may find it easier to have a generic staff notice which can be referred to during an inspection. This should be prominently displayed. A sample text is set out below:

To Whom It May Concern:
Name and address of the premises

Licensing Act 2003 Authority for the sale and supply of alcohol

*Ibeing the designated premises supervisor
named in the licence of the above premises, hereby authorise the following persons to sell
or supply alcohol on these premises at any time during permitted hours.*

(names to be entered) to cover all current bar staff.
Signed and dated

The notice would need to be updated regularly to take account of staff changes, or alternatively could be written on a white board and changes made at each shift. The latter may be beneficial in large outlets where several personal licence holders share managerial responsibility as it demonstrates more effective supervision/authorization.

- Ultimately it will be for the courts to decide whether there was effective authorization of sales by a personal licence holder. This is only likely to be challenged if the DPS is absent for long periods of time and a problem arises as a result. The above steps will help to demonstrate due diligence, but it would also be sensible to include reference to authorization in staff handbooks or training.
- The courts would also look at any arrangements for monitoring of sales in the absence of the personal licence holder who authorised them. This could include incident logs, refusal of sales etc to be reported at the end of a shift or on a regular basis.