



Licensing Bulletin

Winter 2004

Smoking Ban

Following much debate, the public health white paper was published on the 16th November 2004. One of the most controversial issues related to a partial ban on smoking in public places.

- all restaurants will be smoke free
- all pubs and bars preparing and serving food will be smoke free;
- other bars and pubs will be free to choose whether to allow smoking or to be smoke-free;
- membership clubs can choose whether to allow smoking or to be smoke-free; and
- smoking in the bar area will be prohibited everywhere.

The White Paper differentiates between bars that serve freshly-prepared food and those that serve only pre-prepared food: the former will have to ban smoking on the premises. Establishments that opt to allow smoking on their premises will require a "smoking licence". Some of the requirements for the application of such a licence will include:

- well-ventilated areas for smokers;
- no children.

The creation of 'smoking licences' issued presumably by the local authority may lead to a licence lottery and cause distortion of trade. It may cause a disproportionate effect on the business of bars and pubs in some areas, depending upon the preferences and attitudes of their local authority. However such a scheme would probably merge well into the new licensing legislation as presumably smoking would become a licensable activity.

Operators of licensed premises will have to carefully consider their future operating style and target clientele. For example, the operating schedule required by the Licensing Act 2003 will have to be carefully drafted as any reliance upon food to get later hours may cause difficulties if smoking is eventually restricted for food-led premises. Casinos are an interesting proposition. As it stands, these are required to be Members Clubs. Their status could change if the Gambling Bill becomes law, removing the "24 hour rule" for membership application and paving the way for public access. Consequently the anticipated club exemption with regard to smoking would be lost.

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Reminder: New Year's Eve

Since 2002 all licensed premises may open between 11.00am on New Year's Eve and 11.00pm on New Year's Day: an unbroken 36 hour period. Public Entertainment Licences are also extended for the same period.

Security Industry Authority Door Supervisors

The last "phase" of the Private Security Industry Act 2001 which deals with door supervisor licensing in London is fast approaching. All persons who act as door supervisors,

- that is those who are responsible for security, protection, screening the suitability of people entering premises or conflict management in licensed premises that are open to the public,

will need to be registered with the Security Industry Authority (SIA) by **11 April 2005**.

All those who directly supervise door staff will also need to be registered as non-front line staff, although if you employ an approved firm or agency to perform these duties on your behalf, it appears that you as an

operator or manager do not need to be registered. Applications can start being made to the SIA either by post or on-line from **5 January 2005**, and you will need to provide:

- An approved qualification, this must be either 'Level 2 National Certificate in Door Supervision', or 'BTEC Award in level 2 Door Supervision', or 'NOCN Level 2 Award in Door Supervision'. Your current certificate may provide exemptions.
- Fee of £190.

Once your application has been accepted as complete the SIA will undertake the necessary criminality check and issue your Licence. This process can take up to **8 weeks**.

Draft Regulations: Consultation Period Ends

The Government's consultation on their draft Regulations for the Licensing Act 2003 has now finished. The regulations will affect personal licences, hearings, premises licences and club premises certificates. Now that the consultation period has ended it is thought that the Regulations themselves will be announced shortly.

Applications for premises licences or club premises certificates will have to be accompanied by a plan of the premises. In their draft, the Government recommended that:

Plans

- are to the scale of 1:100 *unless the Licensing Authority has previously confirmed in writing that an alternative scale is acceptable*
- show the ambit of the premises
- show the location of any exits, fixed structures, stage, kitchen, external and internal walls
- show where the licensable activities such as the sale of alcohol will take place
- show the location and type of any fire and health and safety equipment

Advertising of new licence and Variation Applications

Applications will need to be advertised firstly by displaying a notice at or on the site of the premises for at least 20 working days and also in a local newspaper. The newspaper must be published not more than 5 working days after making the application.

It is unlikely that the Government will change their position.

The New Act - How Much Do You Know?

Frequently asked questions

1. What is the purpose of a "Personal Licence"?

It authorises an individual to sell alcohol or authorise its sale in accordance with a Premises Licence or Temporary Event Notice.

2. 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.

3. Does there always have to be a Personal Licence Holder or designated premises supervisor on the premises in order to sell alcohol

Although the designated premises supervisor is not required to be on the premises at all times he should at least be contactable. Although all sales of alcohol must be authorised by a Personal Licence Holder, this does not mean that they must be personally present at every transaction. Staff for example may be authorised to sell alcohol.

4. Should more than one Personal Licence Holder be employed?

This is a matter for the individual premises. However, we would strongly recommend more than one Personal Licence Holder as it allows greater flexibility in fulfilling the requirement that every alcohol sale be made or authorised by a Personal Licence Holder.

5. How do I qualify for a Personal Licence?

You must be (a) over 18 (b) not to have been convicted of certain criminal offences and (c) must have passed the Licensing Qualification.

6. How do I obtain the necessary Licensing Qualification?

The Government has yet to announce the details of the qualification. It will be similar to the National Licensees Certificate.

7. How much will a Premises Licence cost?

The proposed fees for a Premises Licence range between £80 and £500 with annual charges from £40 to £225 to cover inspections and enforcement. The proposed fee levels for the new licensing regime are currently out for public consultation. This consultation will close on 23rd December.

8. When will a Premises Licence be needed?

A Premises Licence is required to allow premises to be used for one or more licensable activity, including the sale of alcohol, the provision of regulated entertainment (which includes music and dancing) and the provision of late night refreshments (that is, where hot food and/or hot drinks are provided between 11pm and 5am).

9. How do I convert my Licence into a Premises Licence?

You have to apply to the Licensing Authority for the area where your premises is based. You will need to send:

- (i) A completed Application Form (in the prescribed form).
- (ii) The original or certified copies of existing Licences and Certificates.
- (iii) The consent of the existing Licensee, if that person is not the Applicant.
- (iv) Consent from the proposed designated premises supervisor.
- (v) A plan of the premises in the prescribed form.
- (vi) The fee.

Continued.....

10. When can I start to use my Premises Licence?

At the earliest your Premises Licence will not come into force until the 7th November 2005.

11. Will there be any conditions from my current Licence attached to my new Premises Licence?

When you convert your existing Licence into a Premises Licence, all existing conditions will be transferred onto the Premises Licence - unless you apply at the same time for a variation of any condition and the Application is granted.

Contacts

This Bulletin is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

If you would like any further information on these or any other related topics please contact a member of our Licensing Department:

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