



A New Year. More Changes to the Licensing Laws. Minor Variations Mandatory Conditions, Selling Alcohol to Children and Lap Dancing

BRIEFING

Variations

The current law

The Licensing Act 2003 (“the 2003 Act”) allows a premises licence holder to apply to a licensing authority to vary a premises licence.

This application may be to change licence conditions to reflect proposed alterations to the premises, or to change the licensable activities (sale of alcohol, provision of regulated entertainment or late night refreshment) or the hours during which such activities are permitted.

Any application involves the submission of a completed form to the licensing authority and responsible authorities (police, fire, trading standards, environmental health officer, planners, and the body responsible for the protection of children from harm), payment of a fee on a scale that reflects rateable value (range normally £100 to £635) and the advertising of the application both in a local newspaper (cost approximately £250-350) and on the premises for 28 days.

The application process is the same as that for a new licence. If no representations are received during the 28 day consultation period, the application is granted. If representations are made and are not negotiated away, a hearing is held prior to the expiry of 20 working days after the end

of the representation period. Licence holders need to be prepared that any application to vary a licence may take up to 2 months from date of service.

The New Law - Minor variations

The Government has responded to complaints from the industry that the variation procedure is unnecessarily bureaucratic and disproportionate. Licence holders need to be able to make changes to their premises and to their businesses and the cost and delay caused by the 2003 Act can be prohibitive.

A new procedure is to be introduced whereby licence holders may apply, in certain limited situations, for a minor variation. The new procedure is expected to become effective from early March 2009.

The application will be served on the licensing authority only and there will be no requirement to advertise.

On receipt of the application, the licensing authority must consult with such responsible authorities as it thinks fit.

If the licensing authority considers that the variation “could not have an adverse effect on the



promotion of any of the licensing objectives” it must grant the application.

The licensing authority must determine the application within 15 working days (3 weeks).

The forms to be submitted and the fee involved are yet to be confirmed but it is thought that the fee will be in the region of £74.

A minor variation application may not be made to:

- vary substantially the premises to which it relates
- add the sale of alcohol as an activity
- authorise the sale of alcohol between 11pm and 7am or
- increase the permitted hours for the sale of alcohol

An improvement?

Currently, most licensing authorities agree to deal with minor changes to a licence, particularly for alterations to premises, by way of an informal procedure of depositing new plans. Although not technically covered by the 2003 Act, this is a procedure that works well in the majority of cases. A licence holder submits new plans to the licensing authority and the new plan is appended to the licence. If the licensing authority considers that the changes proposed are significant, a variation application is required.

Under the new procedure, it is unlikely that any licensing authority will agree to the informal deposit of plans. Instead it will be incumbent on the licensing officer to decide whether the proposed alterations *could* have an adverse effect on the promotion of the licensing objectives. It may be that some licensing officers will take the view that *any* change to a licence could have an adverse effect on the promotion of the licensing objectives. The approach will no doubt differ from area to area and indeed, officer to officer, creating uncertainty for applicants and their advisors.

For borderline cases, applicants may be reluctant to run the risk of adding 3 weeks to the variation procedure (as stated above, this can already take up to 2 months). If alterations are to be made to premises, will it be worth going through the minor variation procedure only to be refused at the end of a 3 week period, leaving the licence holder to start afresh with a full variation application?

Our view is that the new procedure will add cost and bureaucracy for licence holders. We have achieved many minor variations to licences for our clients informally and at small cost. This will no longer be possible as the informal procedure will be formalised with greater uncertainty as to outcome.

The reform is, no doubt, well intentioned and but it is difficult to see who will actually benefit from it. Without wishing to pre judge the application form, we suspect that the licensing regime will impact yet further on the rainforest.



Mandatory Conditions

The Policing and Crime Bill ("the Bill"), currently before Parliament, contains a reform to the 2003 Act of major significance to all holders of premises licences authorising the sale of alcohol.

Licensing authorities are to be given a new power to impose mandatory conditions on a particular premises licence or on a category of premises in a particular locality.

The Home Secretary will provide a small list of conditions that may be applied to all licensed premises. A larger list of conditions will be provided that may be applied to some licensed premises.

Such conditions may be imposed when the licensing authority feels that there has been a nuisance, annoyance or disturbance to the public or disorder as a result of the supply of or consumption of alcohol in that area.

For some reason (perhaps someone can explain this to us), the number of conditions that may be imposed is limited to nine.

Any conditions imposed will override existing licence conditions if they are inconsistent with or more onerous than the existing conditions.

Responsible authorities will be allowed to petition licensing authorities to include certain conditions as mandatory conditions.

The Government argues that by allowing licensing authorities to "block apply" conditions on groups or

categories of licensed premises, a cost saving will follow as there will be a reduction in the number of licence reviews. This assumes that there are a lot of premises out there that should have their licences reviewed.

There will be a form of consultation between licensing authorities and licence holders although we have no idea what form this consultation will take, or how much influence on the process licence holders will have.

We have all been confronted with conditions that have been unpalatable to applicants or licence holders. Sometimes these are proposed by responsible authorities during an application or review process. Normally, following negotiation, such conditions are not attached to a licence or are amended so that they become acceptable to the licence holder and enforceable by the authorities.

Should this Bill be enacted, licence holders will be likely to see conditions imposed which may have significant cost implications, for example, controls on promotions, a requirement that anyone selling alcohol be qualified to a specified standard and point of sale information requirements.

A mandatory condition requiring all servers of alcohol to be trained will result in a huge increase in staff training. The Government acknowledges that there will be an increase in training costs to the industry but in carrying out its own cost assessment, the government worked on the basis of an average of 10 servers per supermarket. With assumptions such as this the trade should be worried indeed!



The blanket approach of imposing conditions on all licensed premises in a particular area will have no regard to the size of the individual premises or its contribution to the noise, annoyance or disturbance occurring.

There may be an appeal procedure for conditions targeted at individual premises. It is difficult to see how licence holders will be able to appeal against conditions applied on block.

This would be a major change to the licensing process and in our view, should be resisted. To date, the licensing authority has only become involved during an application for a new licence, variation or review. Even then, its discretion to impose conditions (save on review) is only triggered following representations by responsible authorities or interested parties.

The effect of this new law would be that the licensing authority will be able to act on its own accord, imposing conditions on licences with increased cost to the industry and, in certain circumstances, no prospect of an appeal against imposition of conditions.

We very much hope that this proposal will be dropped.

Persistently Selling Alcohol to Children

It is an offence under the 2003 Act, if on three or more different occasions within three months, alcohol is unlawfully sold on the same premises to a person under the age of 18.

The offender is liable to be fined up to £10,000 and where the offender is the licence holder, the licence may be suspended for up to three months. Police and Trading Standards have the option of giving the licence holder a closure notice, the effect of which is to prohibit the sale of alcohol from the premises for up to 48 hours. If the licence holder accepts the closure notice, criminal liability is avoided.

The Bill proposes to amend the offence so that the offence is committed if alcohol is unlawfully sold on the same premises to a person under the age of 18 on two or more occasions (in substitution for three or more) within three months.

Licence holders can expect an increase in test purchasing with severe consequences for repeated failure

Conviction for this offence or acceptance of a closure notice will not prevent a review of the licence.

Once again, we warn all licence holders to be extremely vigilant to ensure that no alcohol is sold to persons under the age of 18.

Lap Dancing Update

Since our previous briefing note dated 21 November 2008, the Government has, in the Bill, put forward proposals for the reform of lap dancing regulation.

The Bill allows local authorities, in addition to their powers under the 2003 Act, the option to subject lap dancing premises to closer regulatory scrutiny



under the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'). Under these powers, a venue providing lap dancing will be labelled and treated as a "sex encounter venue".

Licences under the 1982 Act are more difficult to acquire and retain than those under the 2003 Act. They must be renewed annually, and a Local Authority may refuse a licence on the basis that the number of such establishments in the area exceeds the number that the authority considers appropriate.

The Bill is in its early stages of its passage through Parliament. It is possible that the Bill could become law in this Parliamentary Session, which ends on 21 July 2009. The new regime could potentially come into force the day the Bill becomes law, but it is common for there to be a delay of several months.

The Bill also allows for arrangements to bring currently licensed establishments under the new regime. Precise details of these arrangements are yet to be published, but the Government has stated that licence holders under the 2003 Act will be given "a reasonable period" before they have to apply for a licence under the 1982 Act. However, it is clearly envisaged that some existing premises will close. Home Office Minister Vernon Coaker has stated he expects the number of lap dancing clubs to decrease as a result of the proposed legislation.

Local authorities electing to use these powers (which are entirely optional) will be able to closely control the number and siting of lap dancing

premises in their area, which is extremely difficult under the existing regime.

Conclusion

We expect the new minor variation procedure to come into effect in March 2009 and we will report to clients as soon as we know more about the fee payable and the form requirements.

With regard to mandatory conditions, the change to the law regarding the persistent sale of alcohol to children and the regulation of lap dancing clubs, the Bill is in its early stages of its passage through Parliament. This means that there could still be amendments to the proposals and indeed some could be dropped altogether.

It is possible that the Bill could become law in this Parliamentary Session, which ends on 21 July 2009. The new regime could potentially come into force then, but it is common for there to be a delay of several months.

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