



Prepare for more changes to the Licensing Act.....

BRIEFING

Introduction

A new year and here we go with more proposed changes to the licensing laws.

There have been issues with the procedures for interim authority applications and temporary event notices and the Government is proposing to reduce some of the more onerous timescales. In addition, the Government is prepared to look at the introduction of an exemption from the need to licence live music entertainment in certain circumstances.

Interim Authorities - Time for Reflection

Proposals to change the current timescales which apply to Interim Authorities are being considered by the Government.

In circumstances where the premises licence would otherwise lapse, including:-

- Death;
- Incapacity; or
- Insolvency

of the holder of the licence, an Interim Authority is a temporary authority to continue licensable activities

The Licensing Act 2003 ('the 2003 Act') states that certain people can serve an Interim Authority

Notice ('IAN') on the relevant licensing authority, the effect being that the premises licence is reinstated from the time the notice is received by the licensing authority. In addition, the person who served the notice is, from that time, the holder of the licence.

The current law states that the IAN should be given to the licensing authority no later than 7 days after the day the licence lapses. However, as this is only a temporary authority, the premises licence will lapse two months after the day the IAN is received by the licensing authority unless an application to transfer the premises licence is received in this period.

These timescales are onerous for those concerned, particularly in circumstances which are stressful and difficult. It is easy to see how serving an IAN could be overlooked in the 7 days following the death, incapacity or insolvency of the licence holder. Even the deadline of two months to apply for a transfer seems unnecessarily short for arrangements to be made for reinstatement of the licence.

For these reasons the following proposals to relax these timescales are to be welcomed:-

- The period during which an IAN can be issued would be extended from 7 days to 28 consecutive days; and



- The period of time to apply for a transfer of the premises licence following an IAN would be extended from 2 months to 3 months.

For those with an interest in licensed premises, there can be huge implications should one of the current Interim Authority deadlines be overlooked. For this reason it is hoped that the Government will take action to implement the proposals outlined above.

Temporary Event Notices

A Temporary Event Notice (TEN) allows organisers of events to carry out licensable activities on a temporary basis. A TEN should be served on the relevant licensing authority but only the Police have a power to object to the event if they consider that the event will undermine the 'crime prevention' objective.

At present, the TEN must be served on the licensing authority and the Police no later than 10 working days before the event. If the Police wish to object to the event, they must serve an objection notice on the individual who served the notice no later than 48 hours after receipt of the TEN, *whether or not the TEN is received on a working day*.

Some sharp lawyers have been known to use the legislation to the advantage of event organisers by serving a TEN on a Friday afternoon...with the possibility that no action will be taken by the Police until Monday morning – at which point it will be too late for the Police to object to an event.

Under current proposals, the Police would be allowed 2 or possibly 3 *working* days to issue an objection upon receipt of a TEN. This proposal seems fair although a change to 2 working days seems sufficient to enable Police to respond to a TEN during the working week. Further, as the existing timescales for TENs are fairly tight, an objection notice period of 3 days is likely to create uncertainty for event organisers and less time to respond should an objection notice be received from the Police.

A second change to TENs currently being mooted is to allow Police the discretion to permit licensed activities by issuing confirmation to a licensing authority in circumstances where a TEN is issued by an event organiser outside of the current deadlines. This seems reasonable and provides more flexibility to event organisers, particularly for events organised at short notice.

Live Music Performances

The proposals to relax the rules for live music performances could be music to the ears of performers and venues alike.

At present, a performance of live music before an audience requires a licence as it constitutes 'regulated entertainment' for the purposes of the 2003 Act.

Many performers claim that the current law has had a negative impact on the number of live music performances, as some organisers and venues are reluctant to spend time and money in obtaining



a licence for what could be a relatively small or one-off event.

Accordingly, the entertainment industry is welcoming proposals which will allow venues to stage live music activity provided it is indoors and before an audience of less than 100. This exemption to the licensing regime will apply to licensed and non-licensed establishments.

Whilst this does not go as far as the original proposals to allow live music performances before an audience of 200 people, it is anticipated that this change will have a positive impact on the number of small live music performances whilst ensuring that performances before larger audiences, which are more likely to cause problems for enforcement agencies, remain within the scope of the 2003 Act.

However, venues should note that live music performances late in the evening are still likely to require a licence as the Government has recommended that 'exemption' performances should not take place between the hours of 23:00 – 08:00.

In addition, residents, interested parties and responsible authorities who consider that the licensing objectives are being compromised by a venue hosting a live music performance under this proposed exemption, will have the power to apply to have the exemption excluded from a specific

premises. This process will be similar to the current process for reviewing premises licences. Any licensed premises wishing to take advantage of the proposed exemption will also be required to vary their licences through the Minor Variations process to remove relevant conditions relating to the provision of live music. As such, licensees will need to decide if the benefit of the exemption will outweigh the cost and administration burden of making an application to vary the premises licence.

Conclusion

The proposed changes represent good news for the licensed trade. It is worth noting that the Government was warned of the impact of these provisions before the 2003 Act came into force. In particular, the 7 day rule on death or insolvency was obviously going to create enormous difficulties. The changes will not obviate the need for insolvency practitioners in particular to be alert to the traps that lurk within the 2003 Act.

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