

A middle-aged man with short brown hair, wearing a blue polo shirt, is sitting at a wooden table. He is holding a glass of beer with a white head of foam. He is looking directly at the camera with a slight smile. The background shows a window with a brick wall outside.

PopplestonAllen

# The Licensed Trade Guide

2021 Edition

# Licensed Trade Guide 2021

This new 2021 edition of the Licensed Trade Guide (LTG) is the fourth version we have produced in the last 8 years; a reflection of the number of changes we have seen recently to licensing regulation.

Areas that have been updated for 2021 include:

## **The Business and Planning Act 2020**

- Relaxation of off sales

## **Natasha's Law**

- Updated guidance on labelling requirements for food which is pre-packed for direct sale (PPDS)

## **The Gambling Act 2005**

- Updated guidance on practice and procedure

## **Employment**

- Employing staff in the Licensed Trade

**Important:** The information provided in this guide is for general information only and is not intended to be or constitute legal or other professional advice. You should seek legal advice before acting or relying upon any information contained in this guide.

The information in this guide was published at the date stated and may be subject to change after that date.

Poppleston Allen disclaims all liability in respect of actions taken or not taken based on any or all of the contents of this guide.

Please see the [link](#) to our full Copyright and Terms of use policy.

Please do contact us if you have any licensing or other legal questions.

You can either contact us on our Nottingham number: 0115 953 8500, or our London number: 020 3859 7760.

We also have an out of hours service for changing Designated Premises Supervisors in the case of an emergency: 07795 011252, and also an emergency licensing service called Licence999, the number for which is 0333 700 7999.

For regular updates on licensing issues why not subscribe to our eNews service on the website at [www.popall.co.uk](http://www.popall.co.uk)

In addition you can receive advice from our specialist training service at <https://www.popall.co.uk/training>



James Anderson



Nick Arron



Graeme Cushion



Andy Grimsey



Lisa Inzani



Lisa Sharkey



Jonathan Smith

# Contents

1. The Licensing System	5
2. The Licensing Act 2003 – General Principles	9
3. Personal Licences	20
4. Premises Licences	25
5. Club Premises Certificates	55
6. Temporary Event Notices	62
7. Smoke Free Premises	67
8. Licensing (Scotland) Act 2005	71
9. Enforcement	78
10. Crime on Licensed Premises	88
11. Health & Safety	97
12. Food Safety	101
13. Noise	107
14. Gambling on Licensed Premises	111
15. Employing Staff in the Licensed Trade	128
16. Glossary of Definitions	148



01

# The Licensing System

# The Licensing System

**There are well over three hundred different Licensing Authorities in England and Wales. They are responsible for all forms of licensing regulation under the Licensing Act 2003, and form part of each Local Authority. The Licensing Authority from which you obtained your Personal Licence may well be different from the Authority responsible for your Premises Licence.**

An application for a Personal Licence is made to the Licensing Authority for the area in which you habitually reside at the time that you make the application – your main place of residence. This remains the same even if you move around the country after obtaining your Personal Licence.

For the premises it is the Licensing Authority where the premises are situated.

The Authority must carry out its functions in accordance with the Licensing Act 2003 and must take into account certain matters in so doing.

## Licensing Objectives

These are fundamental to the whole licensing system. All organisations and persons involved in the licensing process must operate in a way which promotes the Licensing Objectives. Any application must be considered by the Authorities, including the licensing committee, in the light of the four Licensing Objectives:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Any decision which the Licensing Authority makes in relation to your licence must be in accordance with these objectives, and any conditions imposed must be appropriate to promote one or more of them.

## **Guidance**

The Home Office has produced Guidance on the interpretation of the Licensing Act 2003, to provide assistance to Local Authorities, applicants, and all concerned with the Licensing Act 2003 to try and ensure that it is dealt with consistently around the country.

The first Guidance was published in July 2004. This has been updated several times since. The latest Guidance was issued in January 2024. It is intended to assist Local Authorities in producing their own licensing policy, and must be considered by them when dealing with any application.

It can be seen on the Home Office website.

## **Licensing Policy**

Each Local Authority produces its own statement of licensing policy which must be reviewed at least every five years. Local residents, business people, the licensed trade and statutory authorities must be consulted about the contents of the policy.

The policy is intended to be for everyone's benefit.

The Guidance provides advice on what the Local Authority should include within its licensing policy. Most Local Authorities set out some information about their own areas.

It can be easy when faced by numerous angry residents for the Licensing Authority to use the licensing of alcohol as the prime mechanism for solving anti-social behaviour in their area, but most policies make it clear that there are also other mechanisms to try and control anti-social behaviour.

In addition, Local Authorities in their policies usually reinforce the flexible nature of trading hours. However, they often indicate any particular areas which give rise to problems of crime and disorder and nuisance because of the concentration of licensed premises within that area. If it has sufficient evidence produced to it by its consultees a Local Authority can adopt a special policy, which allows it to refuse applications for new premises and certain variation applications, for example, those relating to extended hours or capacities, unless the Applicant can show that the grant would not add to the existing problems. This is usually referred to as a “cumulative impact policy”

Statements of licensing policy contain helpful information for the most part. Most Local Authorities include details of relevant responsible authorities who can object to licensing applications, and give details of how application forms can be obtained, including downloading them from a website.

Some Local Authorities’ policies are over-prescriptive in the requirements they make of applicants. If there is no objection to your application then they are obliged to grant it consistent with conditions you offered. Some authorities request that you provide a lot more information than you need to. It would make sense to obtain our advice before making an application. Any suggestion that your premises falls within a cumulative impact area should send you hurrying to us so that you can be made aware of the implications.





02

# The Licensing Act 2003 - General Principles

# The Licensing Act 2003 – General Principles

## Premises Licence/Club Premises Certificate

It is illegal to provide “Licensable Activities” without the requisite permission. Licensable Activities under the Licensing Act 2003 are defined as:-

- The sale of alcohol;
- The supply of alcohol in a qualifying club;
- The provision of regulated entertainment;
- The provision of late night refreshment – ie. hot food and hot non-alcoholic drink after 23:00 and before 05:00, for consumption both on and off the premises.

In order to provide Licensable Activities to the public you are going to need one of three types of permission:-

- A Premises Licence is the most common form of permission. Such licences will be held by pubs, night clubs, restaurants, bars, off-licences, supermarkets, theatres, cinemas – even burger vans;
- [A Club Premises Certificate \(see page 55\)](#) will be used for the supply of alcohol to members and guests of the qualifying club and the provision of regulated entertainment within that club;
- [A Temporary Event Notice \(see page 62\)](#) can be used to permit any of the licensable activities in premises which either do not have a Premises Licence or Club Premises Certificate, or where the Premises Licence or Club Premises Certificate is insufficient for the purpose of a particular event.

## **Personal Licence**

There are separate licences for you and also for your premises. If the Premises Licence permits the sale of alcohol then there must be a Designated Premises Supervisor, except in qualifying members' clubs and certain village/community halls. This is a Personal Licence Holder named in respect of these particular premises. In most cases it is sensible to have more than one Personal Licence Holder on the premises although only one person can be the Designated Premises Supervisor.

If you wish to supply alcohol in a members' club, or just provide regulated entertainment, or hot food between 11.00pm and 5.00am, you will not need a Personal Licence.

The Personal Licence is portable, like a driving licence. For full details see the section on personal licences.

## **Decision Making**

Only if representations (objections) are made concerning your application will the licensing committee need to meet to make a decision. Some Licensing Authorities insist on any amendments to the application being put before committee for approval which can lead to delays in the granting of the application.

In the absence of representations your application must be granted, usually, and preferably, on the delegated powers of a council licensing officer. Again, detailed regulations dictate the time scales for the lodging of representations, and for the actions to be taken by the Licensing Authority should such a representation be lodged.

Licensing Authorities must reach decisions in accordance with the four Licensing Objectives which are paramount in any deliberation:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Promotion of these licensing objectives is the key factor in considering applications, and any conditions which may be felt appropriate.

The intention of the Government in passing the Act was to streamline the procedure and make it easier for those in the licensed trade to obtain and/or vary their licences/certificates. Similarly it is easier for Responsible Authorities and residents or businesses, together with the Licensing Authority, to enforce responsible management and if appropriate impose sanctions on badly run premises.

Nevertheless, the Regulations **MUST** be complied with. The forms and the information needed to complete them, together with the Act itself and the Guidance plus a policy for every single Local Authority, make applications quite intimidating. Failure to tick a small box on the form can leave you without a vital permission, and helpful comments in your operating schedule can result in an inflexible condition which will tie your hands.

Full details in respect of hearings, and any subsequent appeals are set out in the Premises Licence section.

## Licensing Hours

The Licensing Act 2003 imposes no limits upon the hours for the sale of alcohol or other licensable activities. It will be up to the applicant to decide what hours he needs, on a daily, weekly or monthly basis and make the application accordingly. The grant of those hours will be subject, in the case of each individual set of premises, to the views of the Responsible Authorities including the police, Environmental Health, residents and businesses, etc. If, for example, you are cheek by jowl with residents, Licensing Authorities may be reluctant to permit late trading unless you make provision for protection for the residents from noise and disturbance.

The Act does not control the consumption of alcohol. Accordingly, there is no need to state a period of time during which your customers will be permitted to drink up their alcohol. However, you do have to state the opening and closing hours of your premises to members of the public. Many operators take this opportunity to limit the time for consumption as they find it helpful when dealing with members of the public.

## Relaxation of off sales

The Business and Planning Act 2020 contained important relaxations regarding off sales. These provisions apply to premises licences which had effect on 22 July 2020 or earlier. They do not apply to premises licences granted after that date.

- **If you only have off-sales on your licence**

Firstly, premises that are not currently authorised to sell alcohol for consumption off the premises at all (in other words “on sales only”) will be authorised to provide off sales until 31 March 2024 without the

need to make any application to the licensing authority.

Any restrictions on the licence are suspended in so far as they are inconsistent with this new authorisation for off sales. For example, if you had a condition stating “No off sales” this would not apply.

- **If you are already permitted on and off-sales**

For premises already authorised to sell alcohol for consumption both on and off the premises, the following conditions or types of conditions are suspended:

- any conditions restricting the time when an off sale may be made (when the premises is also open for the sale of alcohol for consumption on the premises)
- any condition that would prevent alcohol being sold in an open container (for example a condition requiring off sales to be in sealed containers only)
- any condition that would prevent off sales where it is a sale for delivery

In other words, if you have on sales and are open for the sale of alcohol for consumption on the premises then you can provide off sales in open containers to the times you are permitted for on-sales.

- **Exceptions**

Premises with on-sales only who hope to benefit from the additional off sales permission do not qualify if a “Disqualifying Event” has occurred in the period between 22 July 2017 and 22 July 2020 (the date when the Act first came into force). This would include if the licensing authority had refused to grant a premises licence authorising off sales, or to vary a licence to include off sales, or if the licence was varied to explicitly

exclude off sales.

- **Duration**

Permissions for both premises previously only with on sales and those with existing on and off sales under this section will continue until 31 March 2024 or until the permission is revoked or excluded.

- **Enforcement**

There are provisions for a so-called “Off Sales Review” which is similar (but separate to) the existing summary review procedure.

A responsible authority can apply for an Off Sales Review at short notice and the licensing authority must decide within 48 working hours (weekends are excluded) whether to take any Interim Steps against the licence. For those who have simply been granted off sales for the first time those interim steps could include excluding off sales from the licence or suspending those off sales.

For those who already have off sales but are benefiting from suspension of conditions relating to time, sealed containers or deliveries the licensing authority can amend those conditions, no doubt restricting the manner of off sales or possibly even preventing them.

An interim steps hearing can take place without the licence holder but operators do have the opportunity to request a further hearing to review those interim steps. There is also a mandatory full review hearing 28 days after the application was made by the responsible authority but again this only relates to the issue of off sales and the rest of the licence and its permissions are not open to restriction or modification.

It is also possible to appeal against the decisions both for interim steps and the final review.

## **Early Morning Restriction Orders (EMRO)**

A Local Authority can, at the request of the Police, if it decides it is appropriate for the promotion of the licensing objectives, introduce an Early Morning Restriction Order preventing premises within a specified area (which have the benefit of a Premises Licence, Club Premises Certificate or a Temporary Event Notice) from selling or supplying alcohol between a stated time between midnight and 06:00. It does not restrict the hours of opening nor the hours regulated entertainment or hot food/drink can be provided. Operators will be consulted upon the proposal before it is introduced and the Local Authority must hold a hearing to consider the proposal before it comes into effect. Should such a proposal come to your attention, then we strongly suggest that you contact us as soon as possible for legal advice.

An EMRO, since it only restricts the times alcohol can be sold, does not apply to takeaways.

The restriction does not apply on New Years Eve, or to mini-bars in hotels.

EMROs are very unpopular. Since 2012, not a single EMRO has been introduced in England or Wales.

## **Late Night Levies (LNL)**

The Late Night Levy is a power by which Local Authorities may introduce a charge for premises that have a licence / certificate allowing them to sell alcohol or provide late night refreshment (in the form of hot food)



between midnight and 06.00. The levy may be applied to the whole of the authority's area or to certain areas, and the authority must specify what period between midnight and 0600 applies. Any premises caught by the LNL are liable to pay a levy to the Local Authority based upon their rateable value, with certain discretionary exemptions and discounts available for certain premises.

The Local Authority can keep up to 30% of the LNL (after deduction of the cost of administering the scheme) but must pass the balance over to the Police who can use the money for any purpose whatsoever, although one would expect the Police to use the money to pay for policing the late night economy. The LNL applies to all premises holding a Premises Licence and Club Premises Certificate within the Local Authority's area, but again the Local Authority must stipulate a time (between midnight and 06.00) beyond which premises which are permitted to sell or supply alcohol will have to pay the LNL.

## **Issuing Applications**

Up to ten different authorities need serving on the same day with all the documentation. Should objections be received the Licensing Authority will fix a hearing unless the concerns of the objector(s) are satisfied. The Licensing Authority has no discretion if no objections are received and it must grant the application, and no hearing is necessary.

However, the actual application process is complicated by the need to complete lengthy forms. Make sure that all the original enclosures are with the form, including the fee, because it will not be considered a valid application by the Licensing Authority if these requirements are not complied with. The time scales for notification and advertisement of the applications are prescribed by regulation and cannot legally be varied by

Licensing Authorities. They are given no discretion in this respect. Some will be helpful but they are not legally obliged to be so. This may mean that you go to the expense of making an application but have to repeat it because you fail, for example, to advertise the application in the local newspaper by the correct date.

## **Reviews**

These will be dealt with in greater detail later in the section on Reviews ([see page 52](#)). The power of Review allows any Responsible Authority or indeed any other person to apply at any time to have your Premises Licence or Club Premises Certificate reviewed by the Licensing Authority. In creating greater freedoms, responsibility has been put on the holder of a Premises Licence or Club Premises Certificate to run premises in a way which does not compromise the licensing objectives.

Accordingly, the power of review can be called upon at any time and gives the Licensing Authority enormous flexibility, for example, by being able to add more conditions to your licence, amend conditions, remove licensable activities, suspend or revoke the licence. A Licensing Authority should only take such a measure if it considers it is “appropriate” and proportionate to do so to promote the licensing objectives.

## **Electronic Applications**

It is possible to apply on-line using forms available on the Government’s electronic application facility or through the Licensing Authority’s own site, if one is available. At the time of applying on-line, it is necessary to make an on-line payment using the Licensing Authority’s payment facility, and all the relevant documents, including premises plans must be submitted electronically, although some Licensing Authorities will accept hard copies. The application is completed in the same way as a written

application. Premises plans do not have to be submitted to a specific scale but it is a requirement that they be in a format which is accessible, legible and provides sufficient detail for the Licensing Authority to be able to determine the application, including the relative size of any features which may be relevant to the application.

Applications for the variation, transfer or surrender of a licence require the applicant to “enclose” the licence or, if this is not possible, explain why it is not being provided. On-line applications should include a scanned copy of the licence but if you do not have access to a scanner, this would be a valid reason for not supplying the licence with the application.

With an on-line application, it is the Licensing Authority (not the applicant) who is responsible for copying the application to the relevant Responsible Authorities such as the Police. This must be done by the Licensing Authority on the first working day after a valid application has been submitted and the fee has been paid.

There are some applications that can be made on-line that still require some original documents to be submitted e.g. original Premises Licence and/or original consent of the incoming Designated Premises Supervisor, and whilst the application itself can be made on-line, some Licensing Authorities still require these original documents. Failure to do this would invalidate the application. This is particularly important to remember if your Designated Premises Supervisor has left at short notice and you have to name a new Designated Premises Supervisor in order to be able to sell alcohol.

Certain procedures, particularly applications for Reviews and Personal Licences, cannot be made on-line unless the Licensing Authority agrees.



03

# Personal Licences

# Personal Licences

**Needed only in premises licensed for the sale of alcohol, this is your own Personal Licence, which you carry about with you wherever you are.**

The Personal Licence is 'portable' and will act in the same way as a driving licence. It enables you to sell or authorise the sale of alcohol in any premises which hold a Premises Licence.

Personal licences are granted by the Licensing Authority in whose area you habitually reside at the time of making the application. Where you work is irrelevant for the purposes of your Personal Licence. Once granted, that particular Licensing Authority retains permanent jurisdiction over your Personal Licence. This remains true even if you have moved to the other end of the country.

## **Application for Personal Licence**

A Personal Licence is granted indefinitely and does not need to be renewed.

The grant of a Personal Licence does not require you to be linked to any particular premises. You do not even need to be working in licensed premises to make an application. You could apply for a Personal Licence after taking a course entirely speculatively.

In order to be granted a Personal Licence, you must apply on the approved form and:-

- be 18 years old or over;

- possess an accredited licensing qualification, e.g. the Award for Personal Licence Holders. If you are applying for a Personal Licence for the first time, you must take the appropriate training course and obtain the qualification. For details of the Poppleston Allen Training Company see our website – <https://www.popall.co.uk/training>;
- not have had a Personal Licence forfeited in the last five years;
- be entitled to work in the United Kingdom;
- not have a conviction for any relevant or foreign offences which are not spent. This includes the vast majority of criminal offences.

If you fail on any of the first four points above, the Licensing Authority must reject your application.

If you do not have any convictions then your application must be granted by the Licensing Authority. You are however required to provide a Disclosure and Barring Service certificate. If this discloses any unspent relevant convictions, the Licensing Authority must notify the Police, and if it discloses any immigration offences the Licensing Authority must notify the Secretary of State (Home Office Immigration Enforcement) who may object.

If neither the Police nor the Secretary of State object, your application must be granted. If they do object, there must be a hearing before the Licensing Committee. There is a recommendation in the Guidance that if the police object the application should be refused unless you can show exceptional and compelling reasons to justify granting you a licence.

If you have relevant convictions we strongly suggest that you [contact us](#) for legal advice in respect of your application.

If you are convicted of a criminal offence whilst you are applying for a Personal Licence then you must tell the Licensing Authority. Failure to do so is in itself a criminal offence and your Personal Licence could be forfeited by a court.

If you appear before a court in respect of a relevant offence you must tell the court at your first appearance that you are the holder of a Personal Licence. Failure to do so means you would commit a further criminal offence. The court has the power to deal with you in respect of your Personal Licence on hearing the criminal matter. It may forfeit it, suspend it, or take no action, but it must go on to inform the Licensing Authority of any sanction taken against your Personal Licence.

You must keep the Licensing Authority informed of any changes in your name or address; failure to do so is again a criminal offence. Your Personal Licence must be produced on request to a police constable or an authorised licensing officer.

### **Forfeiture or suspension**

Finally, you will note from the section on Premises Licences, that for premises selling alcohol there must be a Designated Premises Supervisor. A Designated Premises Supervisor must be a holder of a Personal Licence. If you are to be appointed to such position, your Personal Licence becomes all the more important. Should your Personal Licence be forfeited, revoked or suspended by a Court or the Licensing Authority when you are a Designated Premises Supervisor, the premises will no longer be permitted to sell alcohol.

## **Revocation or suspension**

The Licensing Authority can revoke or suspend your Personal Licence for up to 6 months where you are convicted of a Relevant Offence. The Licensing Authority does not need to hold a hearing before it suspends or revokes your Personal Licence, but will ask you for representations before it makes any decision, and is likely to hold a hearing to consider those. Should it decide not to revoke or suspend your Personal Licence, then it will advise the Police who themselves may request that it is revoked or suspended and, again, the Licensing Authority may decide to do this without a hearing, but it is unlikely to do so.

## **Lapsing of a Personal Licence**

Your Personal Licence will lapse if you are no longer entitled to work in the United Kingdom, and if you have been appointed as a Designated Premises Supervisor then the premises will no longer be legally able to sell alcohol as soon as your Personal Licence has lapsed.





04

# Premises Licences

# Premises Licences

**Your Premises Licence is a crucial asset for your business. It permits you to carry out Licensable Activities which will form the basis of your business. Holding it enables you to trade within the law and losing it would prevent you from providing any licensable activity.**

## Premises

The definition is very flexible in the Licensing Act 2003 Act. It is any place, and also includes a vehicle, vessel or movable structure. Place is not limited to a building.

Fields, gardens and marquees all fall into the definition.

Vessels, vehicles and movable structures that move around require a licence if they are to be used for one or more Licensable Activity whilst they are parked in a regular place. They are to be treated as situated at that parking point or mooring – a typical example is the burger van. If it moves to another location, a licence is needed for that location too, although vessels can carry out licensable activities whilst on the move provided they have a Premises Licence.

Regulated entertainment may be provided on a moving vehicle without a licence, eg. dancing on a festival float. Alcohol however may not be sold on a moving vehicle.

In respect of off sales of alcohol by internet or mail/telephone order, the sale is treated as taking place where you actually select the alcohol physically to meet the order, and place it ready for delivery. In other words – the warehouse will need a Premises Licence, and not the office where the order is taken.

## **Licensable Activities**

Your Premises Licence authorises the premises to be used for one or more Licensable Activities:-

- The sale by retail of alcohol;
- The supply of alcohol in a members' club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

You need a Premises Licence for any one or a combination of the above. Importantly there can be more than one Premises Licence for a single location.

### **Sale of alcohol by retail**

A sale to any person of any quantity of alcohol is retail, unless to a trader for the purpose of their trade, eg. selling alcohol to another Premises Licence holder to sell it as part of their business.

### **Supply of alcohol in a members' club**

See section on clubs ([page no 55](#)).

### **The provision of regulated entertainment**

The categories of regulated entertainment are:-

- Performance of a play;
- Exhibition of a film;
- Indoor sporting event;
- Boxing or wrestling, to include cage fighting and mixed martial arts;
- Performance of live music;
- Playing of recorded music;
- Performance of dance;
- Any other similar entertainment.

The regulated entertainment must be provided:-

- i. Solely or partly for members of the public;
- ii. Exclusively for members of clubs and guests;  
→ If neither i. nor ii. above, for consideration with a view to profit – ie. a charge is made by the person organising or managing the entertainment, including taking money for the provision of goods and services. This includes a private function put on to make profit, even if the proceeds go to charity. If the charge is purely to cover the costs of putting on the entertainment then no licence will be needed, for example, paying for the band at a wedding reception.

Also to be regulated entertainment the entertainment must be provided to an 'audience' with the intention of entertaining the 'audience'.

Games commonly played in public houses, such as pool, darts etc would therefore not require a licence unless they are put on for an audience which includes spectators. So, if your darts team is in a league, you are part of a snooker league, or you stage demonstration matches to which customers are invited, then it might be regulated entertainment.

However, there are certain exemptions from regulated entertainment:-

- Performance of plays between 08:00 and 23:00 for audiences up to 500;
- Performance of dance between 08:00 and 23:00 for audiences up to 500;
- Indoor sporting events between 08:00 and 23:00 for audiences up to 1000 (which would likely include darts and snooker leagues);

- Greco Roman and Freestyle Wrestling between 08:00 and 23:00 for audiences up to 1000;
- Live or recorded music if incidental to an activity which is not regulated entertainment, for example, music in a lift or shopping centre and, most importantly, background music in a pub;
- Live television broadcasts;
- Films used in demonstrations or advertising or as part of an exhibition;
- Music as part of a religious festival;
- Garden fetes;
- Vehicles in motion;
- Morris dancing;
- Entertainment in travelling circuses between 08:00 and 23:00 for audiences up to 500;
- Entertainment provided by or on behalf of local authorities, health care providers or schools on their own premises between 08:00 and 23:00 with no audience limit;
- Live and recorded music held by third parties in schools, hospitals, local authority and community premises with the consent of the owner between 08:00 and 23:00 for audiences up to 500.

There is a special exemption for small premises providing performances of dance. If you have a capacity of less than 200, including staff, you are licensed for the sale of alcohol by retail, your premises are used mainly or exclusively for that purpose, then in certain circumstances some of the licence conditions may be suspended so far as they relate to the performance of dance.

This is a complicated exemption and if you do have small premises, or small function rooms, where there are performances of dance, it is sensible to seek legal advice.

## **The Live Music Act 2012 and subsequent deregulation**

The Act disapplies live or recorded music related conditions if the following criteria are satisfied:

- There is a Premises Licence or Club Premises Certificate in force permitting “on sales”;
- The premises are open for the sale or supply of alcohol for consumption on the premises;
- Live or recorded music is taking place between 08:00 and 23:00;
- If the live music is amplified, or for any recorded music, the audience consists of no more than 500 people.

Live or recorded music also ceases to be classed as regulated entertainment if the above criteria are satisfied.

The same applies to live music played in a workplace between 08:00 and 23:00 to an audience of no more than 500 people.

The exemptions include vocal and instrumental music and also karaoke singing. Pre-recorded videos played on karaoke machines are likely to require authorisation for ‘Films’ but if only the words to the song are displayed then no authorisation is required.

The Live Music Act 2012 also creates a general exemption that live unamplified music provided anywhere shall not be regarded as the provision of regulated entertainment if it takes place between 08:00 and 23:00, regardless of the number of people in the audience.

There are a number of mechanisms for the protection of residents and these are:

- Upon a review of the Premises Licence the Licensing Authority can determine that conditions on the Premises Licence relating to live or recorded music will apply even between 08:00 and 23:00;
- If the Licence doesn't presently authorise live or recorded music the Licensing Authority can add conditions to the Premises Licence as though the live or recorded music were regulated entertainment and so would need to be authorised by a licence, again to apply between 08:00 and 23:00.
- The Licensing Authority can determine that live or recorded music at the premises is a Licensable Activity and live or recorded music can no longer be provided without permission on the Premises Licence or a Temporary Event Notice.
- Other noise legislation, for example in the Environmental Protection Act 1990, will continue to apply. The Live Music Act 2012 does not allow licensed premises to cause a noise nuisance.

The Live Music Act 2012 removes the need to license entertainment facilities completely – regardless of time or audience size. This means that dance floors, microphone stands, pianos made available for use by the public etc. are not licensable. Health & Safety law will of course continue to apply.

### **Late night refreshment**

This is the provision of hot food or hot non-alcoholic drink to members of the public between the hours of 23:00 to 05:00, for consumption either on or off the premises. This will relate primarily to night cafes and take-away food outlets. However, if you have a late bar, and want to serve tea/coffee, you must have this permission.

If you run a hotel or holiday park and are only supplying hot food or drink to guests, permission for late night refreshment is not required. The same is true if you are an employer supplying to one of your employees. If you have vending machines or are providing hot food or drink free of charge then a Premises Licence will also not be required.

A licence will also be required for mobile premises, eg. burger and kebab vans at each place where they park.

## **Sexual Entertainment Venues**

The Policing & Crime Act 2009 created sexual entertainment venues principally covering lap/pole/table dancing but also extending to topless bar staff, and blue comedians. There are exemptions to premises that provide entertainment of this nature for no more than 24 hours on 11 occasions or fewer in a period of 12 months but each occasion must be a month apart. If you are thinking of providing this entertainment then it is important that you contact us for advice as the legal position is complicated. Sexual Entertainment Venues require a separate licence but if they also wish to provide any of the activities mentioned in the earlier paragraphs they will also need a Premises Licence.

## **Who should apply for the Premises Licence?**

The person who makes the application is the person who carries on, or who proposes to carry on, a business which involves using the premises for licensable activities.

Where an individual applies for a Premises Licence, then they must prove that they are entitled to work in the United Kingdom. If an individual ceases to be entitled to work in the United Kingdom, then the Premises Licence will lapse immediately. The Premises Licence can be reinstated



by way of a transfer or an application for an Interim Authority within 28 days of it lapsing.

Generally owners or operators will apply for their own Premises Licences; so for managed houses, the owning company will apply. Some companies allow the tenant to apply for the licence. They see themselves purely as Landlords. As the value of the premises must include the Premises Licence then Landlords run the risk that the Premises Licence could be lost or modified in such a way as to reduce the value of their investment. On the other hand if Landlords hold the Premises Licence themselves then they could be prosecuted for matters which they have virtually no control over. However case law has suggested that where a Premises Licence Holder who was not carrying on Licensable Activities had no knowledge of a licence breach then a conviction would be unlikely. If the premises were caught in a Police operation with 2 sales to underage persons within three months then the holder of the Premises Licence can be prosecuted even though it is not providing licensable activities at the premises. It can therefore be seen that there are technical problems with both approaches.

The Premises Licence can be held by a company or a partnership as well as an individual. It lasts for the life of the business and it does not need to be renewed. If the business is sold to a different company as a going concern the Premises Licence should be transferred.

The Premises Licence is however liable to an annual charge payable to the Licensing Authority.



**Fields, gardens and marquees  
are all defined as 'premises'**

Any number of Licences can be granted for each premises. An example of this could be a building used by two separate catering companies. The Police and Licensing Authority should be advised which Premises Licence is being used in such.

### **To whom do you apply?**

To the relevant Licensing Authority - this is the Licensing Authority where your premises are situated.

### **Who can make representations?**

Responsible authorities receive a copy of the application and they are able to make “representations”.

Responsible Authorities:-

- The Licensing Authority
- Police;
- Fire;
- Authority responsible for Health & Safety;
- Planning;
- Environmental Health;
- Designated body for the protection of children from harm;
- Authority responsible for Weights & Measures – usually Trading

Standards;

- Additional authorities if a vessel is involved;
- The Primary Care Trust or Local Health Board
- The Secretary of State (Home Office Immigration Enforcement).

Any other person, whether or not they live or work in the vicinity of the premises, can now make representations to an application as long as it

is relevant to both the application and one of the four licensing objectives and is not frivolous or vexatious.

## **Applications which include a request for permission to sell alcohol**

All premises with a Premises Licence (except those with Club Premises Certificates and community premises that have applied successfully for a dispensation), must have a Designated Premises Supervisor. There can be only one appointed for each Premises Licence. The Designated Premises Supervisor should be the first point of contact at the premises, in day-to-day control, even though they may be absent from the premises from time to time.

The Designated Premises Supervisor must be the holder of a Personal Licence.

Due to the high level of responsibility involved, this person must formally give their consent in writing to undertaking this role as part of any application to name the person as the Designated Premises Supervisor.

The police may object to the appointment of a Designated Premises Supervisor if they feel that there is likely to be a breach of the crime and disorder objective if the person becomes the Designated Premises Supervisor.

Premises which do not have a Designated Premises Supervisor, either because one was never appointed, or because the Designated Premises Supervisor has left, may not sell alcohol. One important exception to this is in respect of community premises when the management committee of village halls, church halls or similar community premises can apply to be

collectively responsible for the supervision of alcohol sales instead of having a Designated Premises Supervisor.

Likewise, should a Designated Premises Supervisor cease to hold a personal licence for any reason, the premises can no longer sell alcohol.

## **How do you apply for a Premises Licence?**

You must complete the application form – in black ink – the form being standard throughout England and Wales.

It is an intimidating form, and each part of it must be correctly completed. If you have any doubts at all about how to complete the form you should seek legal advice.

The application is sent to the Licensing Authority in whose area the premises are situated and with the application you must also send:-

- A plan of the premises drawn in accordance with the regulations. The regulations are strict, prescribing what should be shown upon the plan. Be careful what you show on the plan. Some Licensing Authorities insist that if something is shown upon the plan and moved it needs an application for variation even though it may not strictly be required to be shown on the plan in the first place;
- A consent form signed by the proposed Designated Premises Supervisor (where permission to sell alcohol is being sought);
- Where the application is made by an individual, evidence of the individual's entitlement to work in the United Kingdom
- The fee – calculated in accordance with the table at:-  
<https://www.popall.co.uk/expertise/licencescertificates/application-fees>

Applications for Premises Licences can now be made on-line in certain circumstances – please see the section on Electronic Applications on [page 18](#).

A copy of the application form and all the enclosures, including the plans, must be served on all the Responsible Authorities unless the application is made electronically in which case the Licensing Authority are obliged to do this on your behalf.

The Responsible Authorities must all be served on the same date as the Licensing Authority.

## **Operating Schedule**

This is incorporated in the application form. It requires you to include a general description of the style and character of the business including other information about the locality and the facilities that are provided for your customers.

It has certain fixed requirements but beyond that it is left to your discretion as to what you should include. You must include the following:-

- Name and address of the premises;
- Licensable Activities you intend to provide;
- The times during which those Licensable Activities will take place;
- Any other times during which the premises will be open to the public;
- If you require the licence for a limited period only (e.g. 6 months), details of that period;
- Details of the proposed Designated Premises Supervisor where alcohol is involved;
- Steps which you propose to take to promote the Licensing Objectives.

The application is assessed by the Responsible Authorities who consider whether, if granted, the Premises Licence would cause problems which relate to the Licensing Objectives. The Responsible Authorities therefore have to have some information as to what your operation is about. One of the most common requirements of the Police for the prevention of crime and disorder is the inclusion of a CCTV system; adequate training of staff is also extremely important. Conditions that might be inserted on the licence purely for fire prevention no longer have any effect as these measures are now covered by alternative legislation. This is true for existing licences as well as new applications.

## **Advertising the application**

The application must be advertised prominently at or on the premises and in a newspaper circulating in the area.

- Notices displayed on or near the premises.

Regulations specify the details with which you must comply. Failure to comply with any of the regulations will render your application void, and the Licensing Authority will reject it.

- The notice must be on A4 size or larger and be on pale blue paper;
- Print on the notice must be black and of a size equal to or larger than font 16;
- The notice must be displayed for a continuous period of not less than 28 consecutive days starting on the day after the day on which the application was given to the Licensing Authority;
- The notice must be easy to read from the outside of the premises;
- If the premises cover an area of more than 50m<sup>2</sup>, you must put further notices at every 50m point along the external boundary where it is adjacent to a public footpath or highway.

- Published notices.
  - The notice must be placed in a local newspaper circulating in the vicinity;
  - Publication must be within 10 working days (excluding Bank Holidays and weekends) of the day after the application was given to the Licensing Authority.

You have to set out in the notice, displayed on the premises and in the newspaper, the relevant Licensable Activities that you want to carry on and the times they will be carried on, the name of the applicant, the address of the premises and the postal address and the website address where the Licensing Authority's licensing register can be inspected for details of the application.

It must also state clearly the closing date for the receipt of representations by the Licensing Authority and that representations must be in writing.

Finally, the notice must state that making a false statement is a criminal offence.

## **Determination of your application**

If your application has been submitted correctly to the Licensing Authority, and there are no relevant representations made against it, the Licensing Authority must grant the Premises Licence – no hearing is necessary.

The grant of the licence will be subject to conditions which are consistent with the information which you have put in your operating schedule.



Accordingly, if you have indicated that you will provide a CCTV system, then this is likely to be a condition on your Premises Licence.

The Premises Licence will also be granted subject to the mandatory conditions ([see page 43](#)).

## **Representations – objections**

People will be alerted to the application by the notice on the premises, or the advertisement in the local newspaper. Licensing Authorities are also under a duty to publish details of applications on their website.

Representations must be relevant, ie. they must concern the likely effect of the grant of the licence on the Licensing Objectives.

Representations can be made by Responsible Authorities, Councillors and indeed any other person whether or not they live or work in the vicinity.

The representations must also relate directly to the premises concerned, and they must not be frivolous or vexatious.

So long as the representations are valid and are made within the 28-day period the Licensing Authority must make arrangements for a hearing.

Details of the arrangements for hearings and the procedures to be followed are laid down by regulation. We do not set out full details of these in this handbook. Suffice to say that if your application does receive a representation you should seek legal advice.

The Licensing Authority will issue a hearing date to all parties and advise all parties of their rights of representation.

Even if people making representations do not turn up at the hearing, their written representations can be considered by the Licensing Committee.

## **The Hearing**

The conduct of the hearing is largely controlled by regulations, but differs substantially from one authority to another, quite often dependent on the confidence and experience of the person who is sitting in the Chair.

The regulations indicate that the hearing should take the form of a discussion and that cross-examination should not be permitted without the consent of the Licensing Committee.

However, the Licensing Committee can give their consent to questions being asked, and parties should be entitled to ask questions of other parties involved in the hearing, otherwise a bland statement of alleged facts may go unchallenged and may prove to be entirely incorrect.

Generally, all parties must be allowed to put forward their case and the members of the Licensing Committee must then make their decision.

They must make their decision based on what they feel is appropriate to promote the Licensing Objectives.

They can grant the application in its entirety, subject to any conditions they consider appropriate for the promotion of the Licensing Objectives.

They could exclude some of the Licensable Activities or cut back the hours or limit the hours on certain days.

They may reject the application.

Whatever decision the Licensing Committee comes to, it must give notice of its decision to the applicant, and to any person who made relevant representations, giving reasons for their decision. It should also supply details of the rights of appeal which any of the aggrieved parties have.

Thereafter, the council must issue the Premises Licence and the summary to enable the applicant to be fully aware of the conditions by which they are bound, and to enable them to display the summary of the licence at their premises as they are required to do by law.

## **Mandatory Conditions**

These form part of all Premises Licences issued by the Licensing Authorities:-

- Films

Where a Premises Licence authorises the showing of films under 18 year olds can only be admitted to films designated as suitable for that age by the film classification body or if none by the Licensing Authority.

- Door Staff

If there is a condition requiring security to be present at specific times, or generally at the premises, each individual must be licensed under the Private Security Industry Act. This condition is not limited to licences authorising the sale of alcohol.

- Alcohol Permissions

Where the licence authorises the supply of alcohol, the following conditions apply:-

- There shall be no supply of alcohol at a time when there is no Designated Premises Supervisor holding a Personal Licence;

AND

- Every supply of alcohol must be made or authorised by a person who holds a Personal Licence.

The Designated Premises Supervisor does not have to be on the premises at all times. After all, if your premises were open for 24 hours they couldn't possibly be there all the time, and they may also like a holiday from time to time.

They do not have to be the only Personal Licence holder at the premises, but then again they may be.

A Personal Licence holder does not have to be present during a transaction for the sale of alcohol. They do not even have to be on the premises at all times. It is advisable to ensure that a Personal Licence holder is always available if not actually on the premises. The Personal Licence holder may authorise their staff to make sales but they remain responsible for those they authorise.

If the police are going to query who has made a sale of alcohol, it is a wise Personal Licence holder who ensures they give authority to their sales staff in clear terms, preferably in writing. Any person so authorised must be properly trained in the requirements of the Licensing Act 2003, in particular in respect of sales to persons who are under 18, or to persons who are drunk.

- No irresponsible drinks promotions to be carried out on the premises;

The "responsible person" must ensure that staff do not carry out, arrange or participate in any irresponsible promotions.

An irresponsible drink promotion is considered to be one of the following promotions that encourages the sale or supply of alcohol for consumption on the premises:-

- games or other activities which require or encourage, or are designed to require or encourage, individuals to:
  - drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
  - drink as much alcohol as possible (whether within a time limit or otherwise)
- provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- dispensing alcohol directly by one person into the mouth of another (other than where the other person is unable to drink without assistance by reason of disability);

This last condition is directed at the so called “dentist chair” practice of dispensing alcohol directly from the bottle into the customer’s mouth. You can permit the use of a yard of ale but you must ensure that it is only held by the customer.

- Free potable tap water must be provided on request to customers where it is reasonably available in the premises.

You can still refuse to serve somebody who comes into your premises and simply wants free water. On the other hand, you should provide it to a genuine customer.

- The Premises Licence Holder or Club Premises Certificate Holder must ensure that an age verification policy is adopted at the premises in relation to the sale and supply of alcohol.

The policy must indicate that where the responsible person believes that the individual appears to be under the age of 18 (or such other older age as may be specified in the policy; for example, challenge 21, challenge 25) such individuals should produce on request, before being served alcohol, a photographic identification bearing their date of birth and either a holographic mark or an ultraviolet feature.

The Designated Premises Supervisor must ensure that the sale of alcohol is then carried on in accordance with that policy.

There are particular problems with remote off sales. A customer may order a significant number of food items and ask for a couple of bottles of wine to be included in their delivery. On the face of the condition, they would have to prove their age when placing the order if required to do so. In fact the order may be taken over the telephone. It is best practice to advise the person placing the order that they will be asked for evidence that they are over 18 when the alcohol is delivered to them and only accept payment remotely by credit card.

A requirement for the “responsible person” to have specific volumetric measures of alcohol available to customers:

- Beer or cider in half pint measures;
- Gin, rum, vodka or whisky in either single 25ml or 35ml measures;
- and

- Still wine in a glass in measures of 125mls.

These measures must be displayed in a menu, price list or other printed material such as a blackboard.

There is also a requirement that the responsible person must ensure the customer is made aware of the availability of these measures if the customer does not specify the quantity of alcohol to be sold. eg: if a customer asks for a beer you should make them aware of the measures unless satisfied they are familiar with them, eg they are a regular or have been to the bar on previous occasions that night.

Some of the above conditions identify the “responsible person” as being the person who must ensure that the conditions are adhered to. This may be the holder of the Premises Licence, the Designated Premises Supervisor or anybody over the age of 18 who has been authorised for the purposes of either serving or supplying alcohol. In relation to a private members club it may be a member of the committee responsible for the supply of alcohol or a specific officer of the club such as the Treasurer or President.

- Minimum Drinks Pricing

A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

“permitted price” is the price found by applying the formula:-  $P = D + (D \times V)$

Where:-

- P is the permitted price
- D is the amount of duty chargeable in relation to the alcohol

- V is the rate of value added tax chargeable in relation to the alcohol
- “relevant person” means, in relation to premises in respect of which there is in force a premises licence:-
  - The holder of the premises licence
  - The designated premises supervisor (if any) in respect of such a licence, or
  - The personal licence holder who makes or authorises a supply of alcohol under such a licence;
- “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question.

There is bound to be confusion with respect to these mandatory conditions and you should speak to a solicitor if you are unsure about either how the conditions will affect you or how to implement them.

## **Variations of Premises Licences**

Perhaps the most common reason for a variation of a licence is where there is an alteration to the layout. The plans of the premises form part of the Premises Licence, and should be sent out by the Licensing Authority with the Premises Licence.

Accordingly, a change to the plans which would affect the details required by regulation to be included in the plan, will give rise to the need for variation. A minor variation is normally used for small layout changes (for example, moving fixed seating), adding additional licensable activities to the Premises Licence (other than alcohol) e.g. the showing of films or changing uncontroversial conditions of the Premises Licence. Such minor variations must satisfy the Licensing Authority that they will not impact adversely on the Licensing Objectives. If they meet this test,



then the Licensing Officer will grant the application and full consultation is not required. However, this test itself is subjective and different Licensing Authorities take a different view on what could adversely affect the Licensing Objectives. If a Licensing Officer decides the variation sought is not a minor variation then there is no right of appeal against the decision and a full variation application must be made.

Variations to add the sale by retail or supply of alcohol or to increase the amount of time during which it may be sold or supplied are excluded from the minor variation process and must be treated as a full variation in all cases.

A full variation application follows exactly the same procedure as for a new Premises Licence, with all its attendant costs, and the need for advertisement on the premises and in the newspaper.

You also have to carefully consider whether you need to make an application for a variation or a new Premises Licence. If you are adding a significant amount of extra space to your premises, it may be regarded as a substantial variation and will require a new Premises Licence application. A small amount of additional space will probably only require a variation, and of course for a minor rearrangement of the internal layout you may be able to use the minor variation procedure. If possible contact the Licensing Authority to obtain a preliminary view before submitting an application that could go either way.

Valid representations to a full variation trigger a hearing and the same procedures are prescribed by regulation as for a hearing for a new Premises Licence. If valid representations are received to a minor variation which are upheld by the Licensing Officer, the application will be rejected and there is no right to a hearing or appeal.

## **Variation to change the Designated Premises Supervisor**

There is a streamlined variation procedure for the change of Designated Premises Supervisor and so long as the correct form is submitted, with the appropriate consent from the person who is the incoming Designated Premises Supervisor, and the fee, this application will be deemed to have immediate effect (if requested) when it is received by the Licensing Authority.

This is an essential power within the Licensing Act 2003, as the sacking of your Designated Premises Supervisor on a Friday afternoon would otherwise leave you without the right to sell alcohol for the rest of the weekend.

This can be a very real and expensive problem. We operate an out of hours service for dealing with such emergency applications – telephone number 07795 011252.

Community premises (Church and Village Halls or a similar premises) can apply to remove the requirement for a Designated Premises Supervisor and replace it with a management committee.

## **Transfer of Premises Licence**

It is possible to make an application at any time for the transfer of a Premises Licence to a different holder, ie. if the business is sold in its entirety and is to continue, or if it is being transferred from one company to another within the same corporate group. Such an application may be given immediate effect if required.

## **Death, Insolvency or where an individual is no longer entitled to work in the United Kingdom and Surrender of the Licence**

Problems arise when one of the above events occurs. If a Premises Licence holder dies or becomes insolvent, if as an individual named as the Premises Licence holder they are no longer entitled to work in the United Kingdom, or if the Premises Licence is surrendered to the Licensing Authority, then it lapses immediately. Unless an application to reinstate the Premises Licence is made within 28 days of the Premises Licence lapsing, then it will cease to have effect and cannot be 'resurrected'. Given the emotion that may follow the death of a Premises Licence holder, and the complexities of different types of insolvency of corporate licence holders, it is unsurprising that in many cases the 28 day reinstatement period has passed before anybody realises that the Premises Licence has lapsed. By this time, those parties who may have a financial interest in applying to reinstate (the freehold landlord, a business associate or another family member) will have lost a valuable asset and will have to apply for a new Premises Licence. This may or may not be granted on the same terms as the lapsed Premises Licence.

## **Provisional Statements and Licences**

The Licensing Act 2003 allows for a provisional statement to be applied for. This is on the basis that premises have not yet been built or are due to be altered etc. The application requires a schedule of works and a plan. The granting of a provisional statement is of little comfort as a further application for a Premises Licence has to be made before the premises can commence trading.

A full application for a Premises Licence can be made even when premises are not yet built, so long as all the information required for that

application is available and can be sent to the Licensing Authority.

However, this is a difficult area. It can also impact on your contract for purchase or sale of property, and you would be well advised to take legal advice.

## **Reviews**

The Licensing Act 2003 provides Responsible Authorities, residents and businesses with the opportunity to apply to review a Premises Licence if they believe the premises are not being operated in accordance with the Licensing Objectives.

An application for a review of the Premises Licence may be made at any time by a Responsible Authority or any other person whether or not they live or work within the vicinity of the premises.

There must be grounds for the review which are relevant to the Licensing Objectives. The applicant seeking a review must give a written notice of the application to the Licensing Authority and at the same time give a copy to the Premises Licence holder, and to all the Responsible Authorities.

The Licensing Authority must then advertise the application on the premises in the same way as a new Premises Licence application, and must publish notice of the review on its website. The review application should also be displayed at the Licensing Authority's offices.

The Licensing Authority must then arrange a hearing, again the procedures are governed by regulation, at which all parties can put forward their case.

The importance of the review is that the Licensing Authority has a variety of ways of dealing with the premises in order to promote the Licensing Objectives. It is not limited to revoking the Premises Licence, or simply leaving it to continue.

It can modify the conditions on the Premises Licence, for example by shortening the operating hours, or can exclude a Licensable Activity from the Premises Licence. It can remove the Designated Premises Supervisor, impose additional conditions, suspend the Premises Licence for a period not exceeding three months, or the ultimate sanction, revoke the Premises Licence.

The Licensing Authority does not have to take any of the steps listed above. It may simply take the opportunity to give a very stringent warning to the Premises Licence holder or take no action at all. Obviously, each case will be dealt with on its merits.

In the more serious cases, the summary review procedure permits a senior officer of the Police to apply for a summary review of a Premises Licence if they are of the opinion that the premises are associated with serious crime and/or disorder. The Licensing Authority has to take action within 48 hours and can take interim steps including the suspension of the licence pending a full review hearing. For further details please see our enforcement section on [page 78](#).

If there is a review of your licence you should contact us without delay.

## **Appeals**

There is a right of appeal by an aggrieved party following any decision reached at a hearing.

It should be noted that appeals from the licensing committee go to the Magistrates' Court for the appropriate area. The appeal is by way of re-hearing and must be issued by the party aggrieved by the decision within 21 days of the decision being notified in writing.

The Magistrates' Court then has all the powers of the Licensing Authority in considering the case before it.

Any decision reached on the review of a Premises Licence by a Licensing Authority is 'suspended' until the appeal before the Magistrates Court is determined. This is not the case in a review following a summary review when the Licensing Authority can impose interim steps up to the appeal hearing.

There is no further appeal on to the Crown Court under the Licensing Act 2003 Act except against the Licensing Authority imposing interim steps on a review following a summary review.

Any appeals on points of law will go to the Administrative Court of the High Court for consideration.



DANCE  
AGAIN

05

Club Premises Certificates

# Club Premises Certificates

**A Club Premises Certificate is specific to a private members non- profit making club. Without it you will not be able to engage in “Qualifying Club Activities” as defined below. Remember that it may be possible to have a separate Premises Licence for the same premises in order to broaden their appeal. You can then designate which one you are using for a particular type of function when non members will be present. This is a complicated area and you should seek legal advice if you wish to occasionally open the premises to non-members.**

## Qualifying Club Activities

The only activities which are licensable in respect of a “Qualifying Club” are:

- The supply of alcohol to members of a club;
- The sale of alcohol to guests of members;
- The provision of regulated entertainment to members and guests.

## Qualifying Clubs

There are several general conditions which must be satisfied in order for your club to be eligible to apply for a Club Premises Certificate. There are also additional conditions which must be satisfied if the club wishes to supply alcohol.

Private Members Clubs may be identified for example as a Miners Welfare Club and Institute or have formed friendly Societies or Industrial and Provident Societies, however the Club Premises Certificate will usually rest with the Club.



There is no requirement under a Club Premises Certificate (but you will need one if you also have a Premises Licence) for there to be a Designated Premises Supervisor nor is a Personal Licence holder required in relation to the supply of alcohol.

## **Qualifying Criteria**

- Persons may not be admitted to membership or any of the privileges of membership without an interval of at least two days between their nomination or application for membership and their admission.
- Where persons become members without prior nomination or application the same two day interval applies.
- The club must be established and conducted “in good faith”.

NB: Matters to be taken into account in determining “good faith” are any arrangements restricting the club’s freedom to purchase alcohol, whether any money, property or gain arising from the club is applied otherwise than for the benefit of the club and the arrangements for giving members information about the club’s finances, the accounts and other records kept and the nature of the club’s premises.

- The club must have at least 25 members.
- Alcohol must not be supplied or intended to be supplied to members on the premises otherwise than by or on behalf of the club.

## **Additional Conditions Relating to the Supply of Alcohol**

- The purchase of alcohol must be managed for the club in general meetings or by a committee of members elected by the club who are over 18.
- No commission is payable to any person with regard to the purchase of alcohol by the club.

- No pecuniary or other benefit is obtained by any person in relation to the supply of alcohol by the club

NB: There are specific additional provisions in respect of industrial and provident societies, friendly societies and miners welfare institutes in relation to which specific legal advice should be sought.

## **Associate Members/Events**

Associate members and their guests have the same rights in respect of the club as a guest of a member of the club. A person can only be an associate member if he is permitted to be such by the rules of the club and is a member of another club which satisfies the qualifying criteria above.

There are different categories of members including: Associate, Temporary and Life, however clubs are only permitted to supply alcohol to members, and guests of members. If your club wishes to open its doors to members of the public then in most instances a Temporary Event Notice will be necessary ([see page 62](#)). For larger events open to the general public, the club would need to hold a Premises Licence side by side with the Club Premises Certificate to permit public access.

## **The Club Operating Schedule**

This is the most important element of any application for a Club Premises Certificate. It deals with how the club will operate and what Qualifying Club Activities are to be carried on.

Details of the following matters amongst others must be included:

- The Qualifying Club Activities to take place within the premises;
- The times during which these activities will take place;

- Any other times when the club is open to members and guests;
- Where the supply of alcohol is proposed whether it will be for consumption on and off the premises;
- Steps you will take to promote the Licensing Objectives.

The most important aspect of the club operating schedule will be the details of how the Licensing Objectives will be addressed by you ([see page 6](#)).

## **Off Sales**

When your application for a Club Premises Certificate authorises off sales those off sales will be restricted to times during which the certificate permits the supply of alcohol for consumption on the premises and such off sales must be made to members in person, and only in sealed containers.

If there are areas outside where alcohol can be consumed (for example, a beer garden or terrace) the advisable course of action is to include it within the licensed area so any consumption of alcohol in that area is not classed as consumption 'off' the premises.

## **Application Process for new Club Premises Certificate**

There is a fairly lengthy application form which needs to be completed. The application is in two parts, A and B, and requires a declaration relating to how the club will operate. The application must be served upon the Licensing Authority and the Responsible Authorities, an advertisement placed in a local newspaper and a notice displayed at the premises. There is a period of 28 days for Responsible Authorities and any other person to make representations and the notice on the premises must remain in place for this 28 day period.

Assuming that no representations are made the application will be granted at the end of the 28 day period without the need for a hearing. If any representations are made then negotiations can take place to try to achieve a compromise, for example, amendments to the operating schedule which will be reproduced as conditions on the certificate. Where such representations cannot be compromised a hearing will be required before the Licensing Committee to determine whether it's appropriate that your application should be granted, refused or granted subject to additional conditions or restrictions.

New Club Premises Certificate applications and variations to certificates can now be made on-line – [please see our Electronic Applications section on page 18.](#)

### **Variation of a Club Premises Certificate**

An application may be made at any time to vary your Club Premises Certificate. Such an application might be made where you wish to open longer hours or to incorporate regulated entertainment where you have not previously done so. The application process for a variation is similar to an application for a new Club Premises Certificate, however there is no requirement to complete the Declaration.

[The comments on pages 48 and 49 regarding variations and minor variations apply equally to Clubs as they do to Premises Licences.](#)

## **Review of a Club Premises Certificate**

Any Responsible Authority, individual, business or member of the club may apply at any time for a review of your Club Premises Certificate.

The review must be based upon grounds which are relevant to the licensing objectives. Where such grounds exist the Licensing Authority will convene a hearing to determine the matter.

On hearing the matter the Licensing Committee has the power to take any of the following steps it feels is appropriate and proportionate to promote the licensing objectives:

- Modify the conditions of the certificate;
- Exclude a qualifying club activity;
- Suspend the certificate for a period of up to three months;
- Withdraw the certificate.

In certain circumstances the Licensing Authority may also withdraw a Club Premises Certificate if it becomes apparent that it is no longer complying with the requirements to be a Qualifying Club.



06

## Temporary Event Notices

# Temporary Event Notices

**Temporary Event Notices are designed to make provision for small scale one off events, or situations where Premises Licences do not meet the needs of a particular function on a particular night or nights; for example you may want a birthday party at a later time than is included on your Premises Licence, or you may want to hold it in a marquee in a garden of a pub which is not normally covered by your Premises Licence. The maximum number of people who can enjoy the Licensable Activities at any one time under a Temporary Event Notice is 499 including staff and performers.**

The events do not have to be special. If a notice is properly issued, and no counter notice is issued, a licensable activity becomes a permitted temporary activity under the Temporary Event Notice.

The Licensing Authority should acknowledge the notice by signing it and sending it back to you. The absence of any acknowledgement from the Licensing Authority does not stop the event from going ahead.

It sounds too good to be true, doesn't it? Well, it is!

## Procedure

- The Temporary Event Notice, which runs to five pages of questions, plus a further four and half pages of guidance notes is completed and issued to the Licensing Authority, the Police and Environmental Health Officer.
- A standard Temporary Event Notice must be issued at least 10 clear working days before the event and a late Temporary Event Notice must be issued at least 5 clear working days before the event. This excludes the day of service and the day of the event.

- The Police and Environmental Health have 3 working days to object after they receive the notice on the grounds the notice will, if permitted be to the detriment of any of the four Licensing Objectives.
- If the Police or Environmental Health object to a standard Temporary Event Notice, there must be a hearing at least 24 hours before the notice in question is due to start unless agreement can be reached. If the Police or Environmental Health object to a late Temporary Event Notice then the notice simply cannot be used. There is no hearing or right of appeal following an objection to a late Temporary Event Notice.
- There is a right of appeal to the Magistrates' Court for the Police, Environmental Health Officer or the applicant to either the refusal or grant of a standard Temporary Event Notice, but time constraints may prevent this if the notice is issued at the last minute.
- In the event that the Police or Environmental Health Officer object to a standard Temporary Event Notice then agreement can be reached that conditions on a Premises Licence which relate to any part of the area which is covered by the Temporary Event Notice should be attached to the standard Temporary Event Notice. At any hearing following an objection to a standard Temporary Event Notice, the Licensing Committee can likewise impose such conditions.

There are limitations on Temporary Event Notices.

- The event period itself can last for a maximum of 168 hours. This is the time during which licensable activities may take place, but they do not have to take place during the whole of that 168 hours, and some activities may take place at different times to others.
- No more than 499 people, including staff and performers may attend the event at any one time. If there are 500 people or more, it will be necessary for a Premises Licence to be obtained, even if it is for a one off event.



- The same premises cannot be covered by a Temporary Event Notice on more than 15 occasions in a calendar year. Two different rooms in the same building could be used as two separate premises – allowing 30 Temporary Events Notices.
- There must be at least 24 hours between each notice at any one premises where the notices are issued by the same person or by persons “associated” with each other.
- Although each Temporary Event Notice can last for a period of 168 hours, within a calendar year, no more than 21 days can be covered for the premises in question. This means that you cannot have 15 periods of 4 days for example, but you could have one Temporary Event Notice covering 5 days, one covering 6 days and 10 covering one day.
- If an event starts on one day and finishes the next morning this is two days out of the limit of 21 per calendar year.
- An individual must apply for a Temporary Event Notice.
- If an individual holds a personal licence he can apply for up to 50 standard Temporary Event Notices of which 10 can be late Temporary Event Notices per calendar year, assuming that he uses different premises from time to time.
- If he does not hold a personal licence he is limited to 5 standard Temporary Event Notices of which 2 can be late Temporary Event Notices per calendar year.

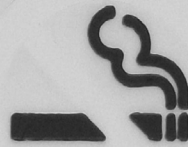
## **General**

The person holding the Temporary Event Notice is the person who is responsible for the sale or supply of alcohol, whether for consumption on the premises or off. There is no need for a Designated Premises Supervisor in respect of a Temporary Event Notice.

You can withdraw a Temporary Event Notice if the event is not to take place, so long as the Licensing Authority receives notification of cancellation no later than 24 hours before the start time of the event itself. In these circumstances it would be wise to do this to make sure that vital days are not being used up.

## **Counter Notice**

If the Licensing Authority finds that the notice breaches any of the points set out above, it must issue a counter notice which effectively cancels the Temporary Event Notice.



**NO SMOKING  
PLEASE**

**07**

**Smoke Free Premises**

# Smoke Free Premises

**The Health Act 2006 contains the legal requirement for all indoor premises and those which might be classed as substantially enclosed to be smoke free.**

All premises which are 'enclosed' or 'substantially enclosed' and which are operated as business premises, are public places or workplaces across the United Kingdom which cannot permit smoking. There are a few exceptions to the legal requirement e.g. designated rooms in care homes, some hotel bedrooms, offshore installations and research and testing facilities. The smoke-free requirements also apply to vehicles used by employees as a place of work.

Contravening the smoke free legislation is a criminal offence and fine levels are as follows:-

- Individuals prosecuted for smoking in an enclosed place – up to £200 or, if a fixed penalty notice is served – £50.
- Any manager or person in control of premises who is prosecuted for failing to prevent smoking in enclosed premises could be fined up to £2,500 per offence.
- Failure to display the required no smoking signs on the premises could result in a fine of up to £1,000 or a fixed penalty notice of £200.

The law is enforced by authorised officers of the local authority – not just environmental health officers and trading standards officers but also licensing officers and specially designated smoking compliance officers. Some local authorities may authorise traffic wardens so that they can catch motorists who smoke in work vehicles.

The restrictions apply to anything that can be smoked, including cigarettes, pipes (including shisha and hookah pipes), cigars and 'herbal' cigarettes. New electronic cigarettes have been developed which allow the user to inhale nicotine in vapour form and which do not produce any smoke. It is therefore permissible for people to use these in areas where smoking would otherwise be prohibited, however many pub companies have policies prohibiting their use because of the potential for discord.

The law applies 24 hours a day, 7 days a week and unless the premises are your home, they will be covered. Even your own accommodation could be covered by the legislation if it is used by fellow workers for rest breaks.

Anyone can call a hot line telephone number and report businesses or people flouting the law and these referrals will invariably lead to an inspection of the premises.

As stated previously smoking is banned in 'enclosed or substantially enclosed premises'. To be 'enclosed' premises or buildings must have a ceiling or roof (either a fixed or moveable device or structure) and except for doors, windows and passageways are wholly enclosed on a permanent or temporary basis. 'Substantially enclosed' means having a ceiling or roof and an opening in the walls which is less than half the total area of the walls. Openings cannot include doors and windows or anything else that can be closed.

Generally, anything with a roof or ceiling and four walls will be 'enclosed'. Any structure with at least two completely open sides that are greater in area than the remaining sides and a roof, is not likely to be considered 'enclosed' nor 'substantially enclosed'. In most cases any building or structure without a roof or ceiling is not likely to be considered to be

‘enclosed’ nor ‘substantially enclosed’.

In determining whether or not premises are ‘substantially enclosed’ careful calculations are required and all buildings with a configuration different from that stated above will need to be individually assessed to determine whether or not they are ‘substantially enclosed’.

The legislation was intended to be straightforward but the definition of ‘enclosed’ or ‘substantially enclosed’ places is complex and before deciding on new smoking shelters for instance, you should seek legal advice as you could be making a costly mistake.

### **What can you do to protect yourselves?**

- Clear and prominent signage – display one legible sign within the premises.
- Do not tempt customers by providing ashtrays!
- Signs to smoking area – if there is an area set aside for smoking outside then make sure it is clearly signposted so that people know where to go.
- Record staff training – you need to make sure that staff have been advised of and made to understand your smoke-free policy. A written record of this training should be kept so that it may be produced in the event that anything goes wrong.

### **Cigarette Machines**

Cigarette machines cannot be placed within the public trading area in any licensed premises. This does not stop cigarettes being sold from behind the bar, nor from the vending machine being placed behind the bar and the staff collecting the money from a customer and putting it into the machines on behalf of the customer.



**08**

**Licensing (Scotland) Act  
2005**

# Licensing (Scotland) Act 2005

Central to the licensing system are the five licensing objectives:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

Not only are the Licensing Objectives central to the Licensing Board's policy statements but they provide the basis for the grant or refusal of applications and attaching conditions to Premises Licences. They will also form the basis of any grounds for the review of a Premises Licence.

## Two Tiered System

### Personal Licences

The Act makes provision for the grant of Personal Licences authorising an individual aged 18 or over to supervise or authorise the sale of alcohol in licensed premises. Personal Licences remain in force for ten years and are renewable (refresher training is required after 5 years).

A Licensing Board is bound to grant an application for a Personal Licence provided that:-

- The applicant is aged 18 or over and possesses a licensing qualification as prescribed by Section 91 of the Licensing (Scotland) Act 2005.
- No Personal Licence previously held by the applicant has been revoked in the preceding five years.
- No notice has been received from the Chief Constable specifying the applicant's convictions for a "relevant offence or foreign offence".



If conditions 1 or 2 are not satisfied, the application must be refused. If a condition 3 notice has been received then the Licensing Board must hold a hearing to determine whether the application needs to be refused for the purposes of the crime prevention objective.

## **Premises Licences / Provisional Premises Licences**

A Premises Licence authorises the sale of alcohol. The principles introduced by the Licensing (Scotland) Act 2005 are intended to provide both Licensing Boards and the trade with unprecedented flexibility and, in addition, give Licensing Boards a high degree of control over the manner in which premises are operated.

A Provisional Premises Licence is appropriate for premises which are being constructed or converted for use as licensed premises. Planning permission is a prerequisite for any Provisional Premises Licence application (but unlike a Premises Licence application you do not need certificates from Building Control and Environment Health before lodging the application).

A Provisional Premises Licence has no real effect until it is “confirmed” by the Licensing Board, that is, once all work has been completed and Building Control and Environment Health Certificates have been received, a confirmation application is lodged.

The Provisional Premises Licence has to be confirmed within 4 years otherwise it is deemed revoked. This period can be extended if completion is delayed for reasons out of the licence holder’s control.

The benefit of a Provisional Premises Licence is that often the premises are deemed “licensed” by banks allowing funds etc to be released if the terms of lending are staged and contingent on the grant of a licence.

Applications for a Premises Licence may be made by “any person” other than an individual under the age of 18. The application must be supported by:-

- An operating plan;
- Planning and building control certificates;
- A food hygiene certificate (‘food’ includes drink so all premises need an Environmental Health S.50 certificate); and
- A plan of the layout of the premises.

The operating plan sets out the applicant’s proposals including

- The times during which it is intended to:-
  - Sell alcohol for consumption on or off the premises
  - Conduct any other activities (consider fully all ‘activities’ of the business)
- The arrangements (if any) for the admission of children

Every application is subject to a hearing and unless a ground for refusal applies, the application must be granted.

The grounds for refusal are:-

- The premises are excluded premises, that is to say they are situated at a motorway service station or, subject to certain exceptions, used as a garage.
- An application for the same premises was refused in the preceding year, unless a direction was made at the time of the earlier refusal, allowing the submission of a further application in the ensuing year; or unless the Licensing Board is satisfied that there has been a material change of circumstances since the earlier refusal.
- The grant of the application would allow the sale of alcohol on the premises during a continuous period of 24 hours or more (unless there are exceptional circumstances justifying such grant).

- The off sales proposed in the application are such that the alcohol would be sold for consumption off the premises before 10:00, after 22:00 or both on any day.
- Granting the application would be inconsistent with one or more of the Licensing Objectives.
- The Licensing Board considers that the premises are unsuitable for the sale of alcohol, having regard to the nature of the proposed activities to be carried on in the premises, their location, character and condition and the persons likely to frequent the premises.
- Granting the application would result in the over provision in the locality of licensed premises or licensed premises of the same or similar description as the subject premises, with not only the number, but also the capacity, of existing premises to be taken into account.

“Any person”, regardless of their proximity to the premises, may object to the application or make certain representations. Often objections/ representations will come from the local community, the Licensing Standards Officers, the NHS and the Police. The Chief Constable will also notify the board if:-

- The applicant has been convicted of a relevant offence or foreign offence; or
- The applicant or a connected person is involved in serious organised crime and, by reason of that involvement, it is considered necessary for the purposes of the crime prevention objective that the application be refused.

The Chief Constable may furnish the Licensing Board with a report detailing “all cases of antisocial behaviour” identified with the preceding 12 months “as having taken place on or in the vicinity of” the application premises.

A Premises Licence once granted has an indefinite duration but can be revoked, suspended or varied under certain circumstances. Non payment of the annual fee can lead to the revocation of the Premises Licence.

Every member of staff, either making sales of alcohol or serving alcohol, eg, room service, must receive two hours training before starting work. This must cover specified subjects and be delivered by either an accredited training company or a Scottish personal licence holder.

## **Conditions**

The Licensing (Scotland) Act 2005 provides for conditions to be attached upon the grant of a licence. These include mandatory conditions, for example to deal with irresponsible alcohol promotions, conditions which apply where premises trade after 01:00, pools of conditions which Scottish ministers may prescribe and which Licensing Boards will have a discretion to attach and finally conditions which local Licensing Boards may impose as being necessary or expedient for the purposes of any of the Licensing Objectives.

## **Licensed Hours**

The Licensing (Scotland) Act 2005 abolished fixed hours for bars, hotels, restaurants etc. and provides that the applicant set out in their operating plan the hours during which they intend to trade. Most Licensing Boards however set accepted 'core hours' as part of their policy.

## **Variations**

Before making any changes to the way the business operates you should consider whether the proposals will affect any of the information contained in the operating plan, the layout plan or any other information contained or referred to in the Premises Licence (most changes will).

If they do you need to apply for a variation and await the Board granting it before putting your changes in place. Bear in mind that changes include an addition, deletion or other modification.

A variation will be a major variation unless it falls into the restricted category of minor variations (see below). A major variation follows a procedure akin to a full licence application thus opening up the possibility of objections. A major variation also requires to go to a hearing before the Licensing Board. A Licensing Board can (as with a new licence application) refuse to grant a major variation and this will bar the applicant from lodging the same application for a period of one year (unless dispensation is given or there has been a material change in circumstances).

Examples of major variations include but are not limited to - increasing capacity; increasing licensed hours; adding activities or increasing the hours when activities (other than the sale of alcohol) occur.

## **Minor Variations**

Minor variations only cover - a variation of the layout plan if the variation does not result in any inconsistency with the operating plan; where children are allowed entry any variation that restricts their terms of entry; any variation in relation to the Premises Manager (Scottish Ministers may prescribe further minor variations but they have yet to do so).

Where a Minor Variation application is made, the procedure for objections is not opened up, there is no hearing and the Licensing Board must grant the application.



09

Enforcement

# Enforcement

**A number of different enforcement powers are available to both the Police and the enforcement agencies within Local Authorities.**

## **Anti-Social Behaviour, Crime and Policing Act 2014**

### **Closure Notices**

A Police Officer of the rank of Inspector or above, or the Local Authority, can issue a Closure Notice if satisfied on reasonable grounds that:

- the use of a particular premises has resulted, or is likely to result in nuisance to members of the public; or
- there has been, or is likely to be, disorder near those premises associated with the use of those premises;

and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

The Closure Notice can last for a maximum duration of 48 hours, and can exclude all persons from the premises at all times, except for any exceptions stated in the notice, but the notice cannot prohibit access by people who habitually live on the premises nor the owner of the premises.

The Closure Notice has to identify the premises, explain the effect of the notice, the consequences of failing to comply with the notice, that an application will be made for a Closure Order, where and when the application would be heard and explain the effect of the Closure Order.

The Closure Notice can only be issued if reasonable efforts have been made to inform people who live on the premises, or any other person

who has control of, or responsibility for the premises, or who has an interest in them. The procedure is therefore stringent for the Police or Local Authority to go through before issuing the notice.

The Police or the Local Authority can cancel a Closure Notice where it feels that the requirements above are no longer satisfied, upon which the Police or Local Authority must issue a Cancellation Notice (if it is cancelled completely), or a Variation Notice (if part of the premises is removed from the notice).

## **Closure Orders**

Unless a Closure Notice has been cancelled, then the Police or Local Authority must apply to the Magistrate's Court for a Closure Order, and the application must be heard not later than 48 hours after the service of the Closure Notice.

The Magistrates' Court may make a Closure Order if it is satisfied:

- That a person has engaged, or is likely to engage in disorderly, offensive or criminal behaviour on the premises; or
- That the use of the premises has resulted, or is likely to result in serious nuisance to members of the public; or
- That there has been, or is likely to be disorder, near those premises, associated with the use of the premises;

and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

The Closure Order can last for up to 3 months and, again, like a Closure Notice, can prohibit access by all persons at all times, other than in specified exceptions.



Alternatively a Magistrates' Court can order that a Closure Notice continues in force for a further specified period of not more than 48 hours or, alternatively, can adjourn the hearing of an application for a Closure Order for up to 14 days to enable the occupier of the premises, persons with control or responsibility of the premises or any interest in the premises, to show why a Closure Order should not be made and, in the meantime, pending the adjourned hearing being heard, it may order the Closure Notice continues until the adjournment.

### **Action after a Closure Order**

At any time before a Closure Order expires, an application can be made by the Police or Local Authority to extend the Closure Order if the criteria for a closure notice continue to apply, when the person on whom the Closure Notice was served, or any other person appearing to have an interest in the premises, may be required to attend before the Court by way of a summons. Upon any hearing of the Closure Order, it can be extended but the Closure Order cannot last for a total of more than 6 months.

At any time before the expiry of the Closure Order, an application can be made by the Police, Local Authority, the person on whom the Closure Notice was served, or anyone else with an interest in the premises to have the Closure Order discharged. Upon hearing the application for the discharge, the Magistrates' Court can discharge the order if satisfied that the order is no longer necessary to prevent the occurrence, recurrence or continuation of disorderly, offensive or criminal behaviour on the premises, serious nuisance to members of the public resulting from the use of the premises, or disorder near the premises associated with the use of the premises.

An appeal can be brought against the decision to make or extend the Closure Order by any person on whom the notice was served, anyone with an interest in the premises, the Police or the Local Authority by appealing to the Crown Court within 21 days from the date of the decision in the Magistrates' Court.

A person who, without reasonable excuse, breaches a Closure Notice is liable to a fine, or imprisonment for up to 3 months or both, and any person who, without reasonable excuse, breaches a Closure Order is liable to a period of imprisonment not exceeding 51 weeks, or a fine, or both.

## **Compensation**

Any person who claims to have incurred financial loss as a consequence of a Closure Notice or Closure Order may apply to the Magistrates' Court for compensation, or to the Crown Court if it made the Closure Order on appeal. Any application for compensation has to be made within 3 months of the date the Closure Order was cancelled, refused or it ceased to have effect (the 3 month period for refusal runs from the date the Magistrate's Court refuse it, or the Crown Court refuse the application if appealed).

## **Review of a Premises Licence following a Closure Notice**

Following the making of a Closure Order, either by the Magistrates' Court or the Crown Court, the Licensing Authority must complete a review of the Premises Licence within 28 days of such order.

If premises are closed voluntarily without the need for a Closure Order, then a review will not necessarily follow.

## **Hygiene Emergency Prohibition Notice/Order**

Under The Food Safety and Hygiene (England) Regulations 2013, an authorised officer from an enforcement authority can close a premise by issuing a Hygiene Emergency Prohibition Notice (HEPN) to the food business operator, if they believe the health condition is met. The health condition being, that there is a risk of injury to health.

The enforcement authority can then apply for a Hygiene Emergency Prohibition Order (HEPO) from the Magistrates Court. This validates the Notice which was served, and enables the prohibition to continue until the enforcement authority is satisfied the health condition is no longer fulfilled.

## **Criminal Justice and Police Act 2001**

A Closure Notice may be issued by a Police Officer or Local Authority authorised Officer under Section 19.

The notice identifies that the licence holder is operating a premises and selling alcohol otherwise than in accordance with the authorisation contained within the Premises Licence. This may be the case for example, if there is a condition on your Premises Licence which requires that CCTV be in operation. If for any reason the CCTV is not operational then there is likely to be an offence being committed and you are operating your Premises Licence other than in accordance with your authorisation.

There is no sanction attached to the notice nor a requirement to close the premises or for you to cease selling alcohol. If you have breached the conditions attached to your licence, then you could be prosecuted.

Whilst the High Court has approved a judgment confirming that threats of arrest in these circumstances are unlawful, it is still very important that you check to ensure that you are complying with the conditions attached to your Premises Licence.

If the issuing Police Officer or Local Authority Officer is not satisfied that the remedial works identified on the notice have been completed to correct the breach of condition, they may go to the Magistrates Court to obtain a Closure Order between 7 days and 6 months of the initial notice being issued.

A Closure Order issued by the Magistrates Court may require the premises to close or to stop selling alcohol until such time as the requirements of the notice have been complied with.

Check the notice which is given to you by the Police Officer or Local Authority Officer to identify under which legislation the notice is being issued. If the Criminal Justice & Police Act 2001 (Section 19) is the source of the notice, the notice itself does not have the power to either close the premises or require you to cease selling alcohol.

## **Summary Review Closure**

These provisions are set out in Section 53A-C of the Licensing Act 2003. A Police Superintendent or officer of a higher rank may sign a certificate requesting a Summary Review of your Premises Licence.

The use of this section of the Licensing Act 2003 is confined to cases where premises are associated with serious crime or serious disorder. Depending on the circumstances, the request for Summary Review may include a request for suspension of the Premises Licence.

From receipt of this request, the Licensing Authority must make a determination within 48 working hours, deciding what “interim” steps are required. At this stage they may order that the Premises Licence be suspended which effectively will close the premises pending a full Review of the licence which must be concluded within 28 days of the initial request for the Summary Review by the Police. The Premises Licence Holder is not required to be notified of this initial hearing. You could be in a situation where the Police have obtained a suspension of your licence and the first you know about it is the decision being served upon you requiring immediate closure.

Premises Licence Holders are normally invited to the initial “interim” steps hearing but either way, the Premises Licence Holder has a right to request a further hearing after the “interim” steps hearing where you can make your own representations. Such a hearing must also be heard within 48 working hours of your request, in view of the seriousness of the procedure being used and the consequences of “interim” steps. There is only one such “rehearing” against the interim steps now available, unless there has been a material change in circumstances.

Other options for the Licensing Committee both at the “interim” steps hearing and at the final Review include removal of the Designated Premises Supervisor or modifying the hours for licensable activities.

Legal advice is imperative in these cases due to the potentially devastating effect on your business!

The Licensing Committee at the full review which must follow the interim steps hearing has a wide discretion and may decide to confirm the interim decision. In the alternative they may require that other measures are taken such as a change to the Designated Premises Supervisor, a

reduction in the trading times of the premises or revocation in the worst case.

The Licensing Committee at the full review must consider any interim steps that have been taken, and whether they should continue or be replaced with other interim steps. If they decide any interim steps should continue following the full review, then the Licensing Committee can decide that they will apply either until the end of the 21 day period, during which an appeal can be lodged, until the appeal has been disposed of, or an alternative period as long as it does not extend beyond the disposal of the appeal.

The decision on the interim steps can be appealed to the Magistrates Court by the Premises Licence holder or the police and such appeals must be heard within 28 days of being lodged.

## **Area Closures**

These type of closures are most common where either intelligence has identified a community wide threat of crime and disorder or where, for example, problems are expected with football crowds or demonstrators. A Police Superintendent or officer of a higher rank may apply to the Magistrates Court for an Order requiring premises to close for the sale of alcohol for a period not exceeding 24 hours.

More usually the Police will pay you a visit and suggest very strongly that you should voluntarily close during the hours that the trouble is expected.

## **Fire Authority Prohibition/Restriction Notices**

This power arises under Article 31 of the Regulatory Reform (Fire Safety) Order 2005.

Prohibition and Restriction Notices may be issued by a Fire Officer pursuant to a risk so serious that continued use of the premises should be or ought to be prohibited or restricted.

This Notice will generally be provided with a list of faults which need to be rectified before the premises may reopen. Implicit in such a Notice is the requirement that the Fire Officer attends the premises to determine that the risks have been rectified and he will then withdraw the Prohibition/Restriction Notice.



**10**

# **Crime on Licensed Premises**



## **Crime on Licensed Premises**

**If you are visited by the police or other enforcement bodies and any offences are mentioned you should seek immediate legal advice. You can contact us by telephoning 0115 953 8500 or out of hours 07795 011252. Some offences may be dealt with by way of a Fixed Penalty Notice issued on the spot. Others may involve a request to attend an interview under caution. Never attend such an interview without a solicitor present.**

### **Unauthorised Licensable Activities**

It is an offence to undertake licensable activities without a Premises Licence, Club Premises Certificate or Temporary Event Notice. It is also an offence to attempt to undertake licensable activities without such permission specifically authorising the activity.

Such offences will therefore not only relate to entirely unlicensed premises but also those premises which have a licence but not for a particular licensable activity or indeed those which operate in breach of conditions. Breach of conditions could also include breach of the mandatory conditions. Not all mandatory conditions may appear on the Premises Licence or Club Premises Certificate as many Licensing Authorities have decided that they will not reissue licences to reflect the additional mandatory conditions applied to the licence or certificate. However as the Premises Licence Holder or Club Premises Certificate Holder, you are responsible for ensuring that the mandatory conditions are adhered to. It is therefore perfectly possible that you could be in breach of mandatory conditions although they do not appear on your Premises Licence or Club Premises Certificate.

If you are selling alcohol at your premises and there is no Personal Licence Holder present, the Secretary of State makes the following recommendations in the Statutory Guidance:

- The person(s) authorised to sell alcohol should be clearly identified;
- The authorisation should specify the acts which may be carried out by the person being authorised;
- There should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and
- There should be in place sensible arrangements for monitoring, by the Personal Licence Holder, the activity authorised by him or her on a reasonably regular basis.

The Guidance recommends that Personal Licence Holders give specific written authorisations to individuals that they are authorised to retail alcohol. A single written authorisation would be sufficient to cover multiple sales over an unlimited period. You can download a useful example of a form of authorisation from our website at [www.popall.co.uk](http://www.popall.co.uk). Whilst this is not guaranteed to satisfy an enforcing authority, it does encompass the points in the Guidance mentioned above.

The offence of carrying out an unauthorised licensable activity carries a maximum period of imprisonment of six months and/or an unlimited fine or both. There is a defence available of due diligence if you were unaware of it. ie. that reasonable steps had been taken to avoid commission of the offence.

It is also an offence to possess alcohol with the intention to sell it where that sale would be an unauthorised licensable activity. This offence again applies to all types of premises and carries a fine of up to £500 with the defence of due diligence applying as above.

## **Disorderly Conduct on Licensed Premises**

The following offences can be committed by anyone working in licensed premises:

1. Allowing disorderly conduct;
2. Selling to someone who is already drunk;

The above offences carry a financial penalty of up to £1,000. It is therefore important to have a good relationship with the police to minimise the chances of prosecution. This will be aided by involvement in local partnerships such as Pubwatch or Best Bar None. If you wish to discount the sale of drinks then particular care is required. It is well worth discussing this locally to find out the attitude of the police.

In a number of cities and towns Pubwatch schemes have been set up. Licensees, usually within the city/town centre, co-operate by warning each other of groups of troublemakers moving from one premise to another. Frequently the schemes also liaise with the police over improving problems of public order. It is well worth being a member of Pubwatch if there is one in your locality.

## **Protection of Children**

If alcohol is being sold then children under 16 may only be present between the hours of midnight and 5am if they are accompanied by someone over the age of 18. If the primary purpose of the premises is the sale of alcohol then this principle applies during all of the opening hours. A member of staff will commit an offence if he allows an unaccompanied child to remain in premises in these circumstances. The offence carries a fine of up to £1,000.

It is also an offence to sell alcohol to someone under 18 or allow the sale of alcohol to someone under 18. Offences will be enforced by the use of “test purchasing” whereby the Police and Trading Standards officers are empowered to send under 18s into licensed premises to attempt to buy alcohol. The person selling the alcohol may also face action in the form of a Fixed Penalty Notice, formal caution or even prosecution.

In most areas the “child” will follow national guidance and tell you his true age. In some areas the child may be instructed to say he or she is 18. No prosecutions have yet followed from provision of false documents but if this happens we would suggest you contact a solicitor without delay.

There is an offence of persistently selling alcohol to minors. The offence is committed if there are two sales of alcohol to minors in a 3 month period. The sanctions are against the Premises Licence Holder and can involve prosecution with an unlimited fine and a potential suspension of alcohol sales of up to 3 months. In the alternative, the Police can propose a period of closure of the premises of between 48 hours and 336 hours at a time of their choosing. The Premises Licence can be, and generally is, reviewed. This can be done in addition to the prosecution. In some areas a Review may take place after the first sale by way of a warning to the Premises Licence holder.

A fixed penalty of £90 can be issued to the person who made the sale. The same penalty can be imposed on anybody making a sale to somebody who is already drunk.

It is also an offence committed by any person under 18 to purchase alcohol on licensed premises.

In the case of selling or allowing the sale of alcohol to an under 18 year old there may be a defence of due diligence available. Not only are the sellers at risk of prosecution but also the Designated Premises Supervisor, Personal Licence holders and even the Premises Licence holder. Furthermore, repeat offences are more likely to lead to a Review of the Premises Licence being brought.

A proof of age scheme is now a legal requirement requiring high quality photographic identification to minimise the chances of prosecution. In most areas the only acceptable forms of identification will be a driving licence, passport or an identity card bearing the PASS hologram or ultraviolet feature. Remember the Home Office has approved the use of Military ID Cards.

Many establishments are now adopting a Challenge 21 or Challenge 25 policy to afford a safety net. This means that anyone who appears to be under the stated age will be required to produce identification. A poster to this effect should be prominently displayed at your premises for the benefit of both staff and customers.

Detailed training records should be kept to demonstrate that staff have the required knowledge to sell alcohol responsibly. Such training should be regularly refreshed. Use of a refusals register provides helpful evidence that training has been followed and enables managers to establish whether any members of staff are not following their training.

Poppleston Allen Training can assist with bolstering a due diligence defence by offering relevant training courses. We can also provide tailored training packages to suit your business. Please contact us on 0115 948 7400 or <https://www.popall.co.uk/training>.

## Drug Abuse

If you knowingly permit or turn a blind eye to the abuse, preparation or supply of controlled drugs on your licensed premises, you are liable to prosecution and could be sentenced to as much as 14 years imprisonment.

These drugs include cannabis and ecstasy, opium and its derivatives such as heroin, cocaine and a variety of pills. Licensees obviously wish to contribute to fighting this menace as well as to safeguard their own position. A few of the telltale signs which can provide a warning about drug abuse are:

- Hypodermic needle tips left in toilets, or tissue paper with blood traces. (Do not handle these items if you can avoid it and then only with great care).

A few indications which may point to drug dealing are:

- People exchanging small packages for money;
- A stream of people entering the premises, speaking to one individual, and leaving, usually without buying a drink;
- A person regularly making or receiving calls on a mobile phone, especially if they are very concerned not to be overheard.

If any of these signs, or anything overheard, arouses suspicion, you should contact the police immediately, preserving the evidence if possible. Licensees and staff should not feel that doing so might adversely affect them when making future applications for a licence. It is more important to co-operate with the police, and doing so is evidence of good management. If you have a Premises Licence you risk immediate closure of your premises if the police believe that there is a serious problem in relation to drugs which such a closure will reduce.

## **Door Staff**

You must ensure that door staff are licensed with the Security Industry Authority or any equivalent body that may succeed it. A national qualification has been developed which must be undertaken by all door staff prior to registration.

The process of registration will also involve a Disclosure and Barring Service check and the fact of having previous criminal convictions may hinder a candidate's prospect of successful registration under the scheme.

It is an offence for a door supervisor not to be so registered carrying potential imprisonment for six months or an unlimited fine.

All Premises Licences carry a mandatory condition requiring any door staff used, as a condition of the Premises Licence, to be registered with the Security Industry Authority. Whether or not you are actually required to have door staff will depend on the conditions of your Premises Licence.



11

# Health & Safety



# Health & Safety

**All employers have a duty to ensure the health, safety and welfare of their employees and all third parties on their premises.**

The key elements of doing so are essentially as follows:

- **Health and Safety Policy**

A written Health & Safety Policy should be in place outlining exactly how your business goes about managing its health and safety responsibilities and who takes responsibility for what. It therefore describes the whole system. It should incorporate training and the carrying out of risk assessments. It is a good idea for it to state exactly where all of the documentary elements are kept within the premises.

The Health & Safety Policy should be signed and dated by a director or partner of the business or a senior member of staff. It should also be reviewed on a regular basis to ensure it is kept up to date.

- **Training**

All staff need to be trained on the Health & Safety Policy. They will also need to be trained in respect of potential hazards contained in any risk assessments which have been carried out in relation to issues involved in their particular role. That training needs to be carefully documented and regularly refreshed. It should be stored carefully so that it looks professional if it ever has to be produced in the event of a problem.

- **Risk Assessments**

These must be carried out in respect of any activity involved in the running of your business to determine whether there is a hazard which creates a risk to the health and safety of the employee. If there is a hazard, then procedures must be put in place to minimise or eliminate the risk of injury. All of this must be documented and regularly reviewed. If something changes operationally within your business then this change will need to be reviewed to identify the potential for hazard and an appropriate risk assessment provided. It is not therefore simply a question of carrying out this process once but rather of it being an ongoing process.

- **Fire Safety**

The same principles largely apply to the issue of fire safety. Fire Officers are no longer involved in the assessment of licensed premises to the extent that they used to be. The duty is very much placed upon a “responsible person” within your business to carry out a fire risk assessment. This is done in very much the same way as it is done for health and safety. It must identify hazards and the measures which have been put in place to minimise or eliminate the risk associated with the hazard. The whole process must be one of continuing review.

The reason that the areas of health and safety and fire safety are so important is, apart from anything else, because no employer wants to be responsible for the death or serious injury of an employee. The Corporate Manslaughter legislation brings in even higher penalties for businesses in the event that someone is killed as a result of their negligence.

Even general health and safety and fire safety offences can be punished with unlimited fines. The Courts used to treat such matters fairly leniently but these days are much more anxious to send a message to the Board

of Directors.

In the case of a prosecution following a death, offences prosecuted under the Health and Safety at Work Act and those under the Corporate Manslaughter legislation, have revised sentencing guidelines.

The guidelines equip the Courts with the ability to award much higher financial penalties for companies, and provide a much higher risk of a custodial sentence being awarded to an individual. For companies with a turnover of £50 million or more, fines can be expected to be in the millions.

Once again, these are complex areas of law with the first stage of prosecution likely to be an invitation to an interview under caution. The risks are simply too high not to have legal advice in respect of these matters.

When a serious accident or incident occurs, a notification to your insurers will be required. You are not bound to use the panel Solicitors that your insurer recommends. You are free to choose your own Solicitor. Take legal advice of your choice as soon as possible.



12

# Food Safety

# Food Safety

The area of food safety is obviously one of significant concern to operators and in relation to which there is a high degree of enforcement. An increase in reports of food poisoning and the growth of “Scores on the Doors” means that the area of food safety has a higher profile than ever.

A complaint from a customer or a random inspection from an Environmental Health Officer can lead to a highly detailed inspection of the hygiene and cleanliness of your kitchen and indeed bar, together with a full assessment of the systems which you had in place to ensure that problems do not arise.

You are expected to have a hazard analysis system in place (HACCP) to ensure that both food and drink are appropriately hygienic. It is a legal requirement to have a documented hazard analysis system in place.

A hazard analysis system essentially involves undertaking the following steps:

- An analysis of the potential food hazards in the food business operation - common examples would be bacteria, cleaning chemicals or foreign objects;
- Identifying the points at which food safety hazards may occur - common examples would be storage, preparation, cooking, reheating etc;
- Deciding which of the points identified are critical to ensuring food safety - this will essentially be any stage where the food may become contaminated;

- Identifying and implementing effective control and monitoring procedures - these are essentially the checks that you will put in place to eliminate the hazards already identified;
- Reviewing the system - this is not just an exercise which you need to carry out once. It needs to be constantly monitored and reviewed to ensure that it is working properly. If you add new menu items then the process needs to be revisited. Similarly, if you employ a new staff member then you will need to do the same.

It goes without saying that significant damage can be done to the reputation of a business in the event that there is, for example, an outbreak of food poisoning. Equally, fines can be unlimited in food safety matters.

Prosecution is particularly likely in the event that pest problems are found at the premises. Environmental Health Officers and Courts alike are not terribly keen on the idea of rodents or cockroaches infesting a kitchen.

Don't forget, the enforcement authority has the power to close down food business operations if they believe the health condition is met, using the powers [referred to on page 83](#) (HEPN and HEPO). The implications of which to businesses are usually severe, including loss of business, brand and reputational damage and staffing implications.

Your training and hazard analysis systems must therefore be up to scratch. If you encounter a problem, it is likely that you will be invited to attend an interview "under caution". This is the first part of the prosecution. You should not assume that it is simply a "friendly" chat. Legal advice is imperative. The consequences are too serious to take any chances!

You are not bound to use the panel Solicitors that your insurer recommends. You are free to choose your own Solicitor. Take legal advice of your choice as soon as possible.

## **Allergens**

From 1st October 2021 the new allergen legislation known as Natasha's Law came into effect.

The introduction of the legislation means that the labelling requirements for food which is pre-packed for direct sale (PPDS) will change in England, Wales and Northern Ireland.

The position currently is that pre-packed food and drink prepared off site just needs to be clearly labelled with an ingredients list. If it is prepared on-site for direct sale the allergen information simply needs to be given in writing, it does not need to be displayed on the packaging.

From the 1st October 2021 you are required to label all products, including those which are prepared and packaged on-site with a full ingredients list. The label will need to show the name of the food and the ingredients list with the 14 allergens required to be declared by law highlighted within it – for example in bold text – so that they stand out within the list.

The 14 allergens are:-

1. Celery – including celery stalks, leaves seeds and the root called celeriac;
2. Cereals containing gluten Wheat (such as spelt and Khorasan wheat/ Kamut), rye, barley and oats;
3. Crustaceans such as crabs, lobster, prawns and scampi;

4. Eggs;
5. Fish;
6. Lupin, such as the flower and seeds;
7. Milk;
8. Molluscs, such as mussels, land snails, squid and whelks;
9. Mustard, including mustard liquid, mustard powder and mustard seeds;
10. Nuts, not peanuts (see below), but nuts which grow on trees, like cashew nuts, almonds and hazelnuts;
11. Peanuts, peanuts are actually a legume and grow underground, which is why it's sometimes called a groundnut;
12. Sesame seeds;
13. Soya;
14. Sulphur dioxide (sometimes known as sulphites).

Food which is prepacked for direct sale (PPDS) is food which has been packaged at the same place it is offered or sold to consumers and is in the packaging before it is ordered or selected. This can include food that customers have selected themselves or food that is kept behind a counter.

Some examples of PPDS food are sandwiches or bakery products packaged on site before a customer orders or selects them, fast food which is packaged before being ordered such as burgers under a hot lamp and pizzas, salads or pasta pots which are packaged onsite ready for sale.

If you are not able to label your PPDS food in this way then you should not present these products for sale until such time as you are able to comply with the requirements otherwise you could face enforcement action.



However, it is important to remember that you must also still ensure you comply with all other relevant food information and labelling requirements in addition to the above.

The Food Standards Agency provides useful guidance on this subject which can be found on their website.



13

Noise

# Noise

**The issue of noise from licensed premises has always been a lively one. The Environmental Protection Act 1990 deals with statutory nuisance which can include noise, smells, smoke etc from licensed premises. It is normally noise which triggers the legislation and gives rise to the service of an abatement notice requiring the owner or occupier of the premises to take steps to prevent the nuisance occurring or recurring. Typically it will arise as a result of a complaint from a local resident who is disturbed by noise from plant or machinery, music from within the premises or smokers congregating in an outside area. An environmental health officer from the local authority will undoubtedly attend the resident's property and make a determination as to whether a statutory nuisance exists.**

Once the abatement notice has been served there is only a limited period - 21 days - to appeal against the imposition of the notice. You need to seriously consider taking advantage of this opportunity as otherwise the notice remains in place indefinitely with potential high fine levels on prosecution through the Magistrates Court for each breach of the notice. This can quickly become very expensive indeed.

The grounds for appeal are very technical and include issues such as the notice having been wrongly worded or served upon the wrong person. It is a technical area and one which requires legal advice. At the very least, the fact of appealing can give leverage in subsequent negotiations with the authorities and lead to an ultimate resolution of whatever the problem is.

Under the Licensing Objective of prevention of public nuisance, an environmental health officer could instigate a review of the Premises

Licence at the same time as or in the alternative to the issue of an abatement notice. Equally, a resident can bring a review as a result of disturbance being experienced rather than going through an environmental health officer. Applying for a review is often cheaper and less time consuming than using other formal channels.

Environmental health officers have a wide range of powers to deal with noise nuisance from business premises (and also domestic dwellings) and as well as applying for a review or serving a noise abatement notice, can seize any equipment causing the noise e.g. DJ equipment.

The local authority can issue a closure notice where premises have been used in a way which has resulted in nuisance to the public or their future use is likely to result in a nuisance if the notice is necessary to prevent the nuisance from continuing, recurring or occurring ([see pages 79 – 87](#)).

Local authorities also have additional powers under the Noise Act 1996 to serve fixed penalty notices on licensees for causing a noise nuisance at night. Local authorities must give warnings to premises owners or operators about the noise nuisance before serving a fixed penalty notice. The notice requires payment of £500.

Noise from outside drinking areas used by customers who want to smoke has been a problem ever since the smoking ban and you could find yourself served with a noise abatement notice to stop customers from causing a noise nuisance while using an external area.

Noise doesn't always need to be from music systems. Air conditioning plant, chiller units, ventilation fans and other equipment can cause noise nuisance and you may have to take steps to acoustically enclose plant and equipment or change fan speeds or types.

Noise nuisance is a complicated subject and legal defences are available to businesses so it is worthwhile taking advice as soon as you have been advised that you are causing a noise nuisance.

Of course also remember that excessive noise may also breach conditions on your Premises Licence and result in prosecution for breach of condition ([see page 90](#)).



**14**

# **Gambling on Licensed Premises**

# Gambling on Licensed Premises

## General

The Gambling Act 2005 controls gambling on licensed premises.

Gambling includes gaming, betting and lotteries.

The Gambling Commission is the primary regulator for gambling in this country although as Local Authorities, Licensing Authorities are also responsible for gambling on licensed premises.

At the core of the Gambling Act 2005 are the three licensing objectives which are:

- The prevention of crime and disorder;
- Keeping gambling fair and open; and
- The protection of children and other vulnerable people.

## Gaming Machines

Commonly known as “fruit machines” or “amusement with prize machines” popularly abbreviated to “AWPs”, gaming machines are found in many public houses and bars.

All Premises with a Premises Licence for the sale of alcohol for consumption on the premises, granted under the Licensing Act 2003 which contain a bar at which alcohol is served, without the requirement that alcohol is served only with food, can make gaming machines available for use.

All such premises are automatically entitled to provide one or two gaming machines of category C or D for use on the premises.

To benefit the Premises Licence holder must write to the Licensing Authority notifying that you are having the machines and pay a £50 fee. There is no annual fee payable with the automatic entitlement remaining in force for the duration of your alcohol Premises Licence.

If your premises licence is ever transferred to another operator, it is important to note that the notification cannot be transferred with the premises licence and the notification process and payment of the fee must be repeated for the incoming licensee.

If you wish to have more than two machines then you must make an application to the Licensing Authority for a Licensed Premises Gaming Machine Permit. In the application, you must stipulate the number of category C and D gaming machines you wish to make available on the premises.

Such applications, particularly for higher numbers of machines, may need you to attend a hearing of the Licensing Committee. It is likely they will consider issues such as supervision of the machines and how you will protect children from harm from gambling. In recent years, some Licensing Authorities have started to request details of general child safeguarding policies in mixed use venues.

Licensed Premises Gaming Machine Permits can be varied, for instance if you wish to increase or decrease the number of category C or D machines.

Licensed Premises Gaming Machine Permits can be transferred if the alcohol Premises Licence is transferred.



## Category C & D Gaming Machines

Category C machines, most commonly found in pubs, have a maximum cash prize of £100 and a maximum stake of £1. Only over 18s can play on category C machines.

Category D gaming machines have different maximum stakes and prizes depending on the type of machine-

- Where the prize is money - maximum stake 10p - maximum prize £5;
- Where the prize is not money - maximum stake 30p - maximum prize value £8, eg a large teddy bear;
- For mixed money and non-money prize gaming machines - maximum stake 10p - maximum prize value £8, of which £5 can be cash;
- For crane grab machines only, which have non-money prizes - maximum stake £1 - maximum prize value £50;
- For coin pushers or penny falls only – maximum cash stake 20p – maximum prize value £20, of which £10 can be cash.

Under 18s can play Category D gaming machines.

Gaming machines must be correctly labelled with (information displayed on the machine either by a sticker/notice or displayed on help/information screens of digital displays):

- Machine Category
- Problem gambling resources eg. Gamcare contact telephone number
- Relevant age restrictions (18+ for category B and C machines)
- Percentage return to player (proportion of the amount paid by way of stakes returned as prizes) or the odds of winning a prize
- ID plate including machine serial number - only required on machines manufactured post 2007
- Manufacturer/supplier information

- Maximum stakes and prizes

You should check with your gaming machine supplier that they are appropriately licensed by the Gambling Commission. This will ensure that machine supplies to you are legal and that those machines are compliant with the Gambling Commission's gaming machine technical standards.

You should check with your gaming machine supplier that they are appropriately licensed by the Gambling Commission. This will ensure that machine supplies to you are legal and that those machines are compliant with the Gambling Commission's gaming machine technical standards.

It is illegal for under 18s to play on Category C gaming machines and you must return any stakes placed on gaming machines by underage individuals as soon as is reasonably practicable and prizes won by underage individuals must should be retained, where possible.

Many Licensing Authorities complete test purchasing to ensure venue compliance. Whilst a single failure may be dealt with pragmatically, underage gambling is a strict liability offence under the Gambling Act 2005 and operators should ensure that age restricted gaming machines are effectively supervised.

**Why take a gamble? Check the  
prize limits under your permit**



## **The Gambling Commission - Code of Practice**

The Gambling Commission has issued a Code of Practice on gaming machines in licensed premises.

The Code of Practice places conditions on the provision of gaming machines in licensed premises.

Firstly, all gaming machines must be located within the premises so that their use can be supervised, either by staff whose duties include supervision (including bar or floor staff) or by other means which could include monitored CCTV. It is common practice to see category C machines located within sight of the bar to allow for supervision.

The second condition is that all gaming machines situated on the premises must be located in a place that requires a customer who wishes to use any cash machine to cease gambling at the gaming machine in order to take out cash.

The Code of Practice goes on to suggest that it is best practice that licensed premises put into effect procedures to prevent underage gambling.

The code also suggests that procedures should be in place for dealing with cases where a child or young person repeatedly attempts to gamble on category C machines. These procedures could include oral warnings, reporting the offence to the Gambling Commission or the Police and making information available on problem gambling.

Challenges for the Operator:-

- The Codes of Practice apply – these mean that the machines must be properly supervised and must not be situated near to an ATM or cash machine. In practice, Licencing Authority Enforcement Officers are likely to visit your premises to check that these Conditions are being complied with.
- With new applications Licensing Authorities may take some convincing to grant more than the number of machines thought appropriate in their policy.

You will have to stipulate how many category C and D machines are made available for use at the premises, and there is no flexibility to interchange machines from the two different categories.

## **Gaming in Licensed Premises**

The Gambling Act 2005 provides certain exemptions in premises which are licensed to sell alcohol for consumption on the premises.

The exemption applies to “equal chance gaming” and this means gaming without a bank and includes games such as poker, bingo, bridge, cribbage, whist and dominoes.

Games can only be played at times when alcohol can be supplied in reliance on the licence or sold for consumption on the premises in reliance on a Scottish premises licence;

For premises in Scotland, premises licences contain an Operating Plan, which must also include ‘gaming’ as a permitted activity under Section 5 of the plan.

Under 18s are not permitted to play;

Regulations issued under the Gambling Act 2005 provide limits which are:-

- For all equal chance gaming (for example whist, bridge, poker, bingo) – a person may not stake more than £5 on any one game. Premises may not charge customers for participation in gaming, nor take a levy from the stake. The £5 limit does not apply to cribbage or dominoes;
- Bingo only – there is a limit on the total amount of stakes and/or prizes permitted in licensed premises of £2,000 per week;
- Poker – the amount to be staked on any day on games of poker must not exceed £100 and the maximum prize to be won in any game of poker is £100.
- Players can be part of a league but maximum stakes and prizes continue to apply. The following diagram details the maximum prizes that can be won in pubs. It is common for national and regional finals to be held at licensed Casinos where the prize limits listed below would not apply for those events.

**National Final - Max Prize £100 (If held in a Pub)**



**Regional Final - Max Prize £100 (If held in a Pub)**



Pub 1 (League A)  
Week 4 £100  
Week 3 £100  
Week 2 £100  
Week 1 £100

Pub 2 (League B)  
Week 4 £100  
Week 3 £100

Games can be played where the winner is awarded points and an overall tournament prize is awarded to the highest scoring player. The maximum tournament prize available will be determined by the number of games played by the winner, therefore no prize would be awarded following each game and at the end of the tournament the winner's prize is calculated relative to the number of games played (3 rounds/ games = maximum tournament prize of £300).

## **Designated Premises Supervisor**

The Codes of Practice in relation to equal chance gaming stipulate that the Designated Premises Supervisor becomes the "Gaming Supervisor" to supervise the gaming. In relation to poker, the Gaming Supervisor is advised to keep a record of the number of games played, the number of players and the amounts staked to ensure that the stake and prize limits do not exceed the permitted maximum.

It may be better therefore for you to consider, if you wish to provide poker, offering a prize rather than allowing customers to play with cash. Cash games are frowned upon by the Codes of Practice and difficult to control in practice.

It is also important to note that gaming in public houses should be ancillary to the main purpose of the premises and that all equipment used should be supplied by the premises.

## **Casino nights and Race nights**

Casino style gaming and race nights can only be provided as a non-commercial event, which means that no part of the proceeds from the event can be used for non-charitable purposes/private gain.

All proceeds must be given to a good cause, such as a charity, and all the participants must be informed in advance that all revenue raised from the gambling activities will be used for that cause;

Games must fall under one of the following categories:

- Equal chance gaming – These games provide all participants with an equal chance of success and do not involve direct competition against a 'bank' and include poker, bingo, whist, bridge, cribbage, dominoes.

Games where the value of prizes awarded is dependent upon the number of players taking part or on the total amount of money staked in a race (pooled prize fund) must be played as equal chance games. For example, if 20 participants each pay £5 the total prize will be £100.

- Un-equal chance gaming (Casino style gaming) – These games make players directly compete against a bank and include roulette, blackjack and craps/dice.

Depending upon the particular game(s) to be played there are two types of permitted event, each with its own separate guidelines and benefits:

## **1. Non-commercial Prize Gaming**

- Includes equal chance gaming, un-equal chance gaming and race nights;
- The events of the gaming determine who the winners are, for example the participants with the most chips at the close the event or the winning 'horse';
- All prizes must be advertised in advance and must not be dependent upon the number of players and stakes raised;
- There are no limits to prize, stakes and participation fees.



- An example of the above would be a charity casino event, whereby games such as roulette and blackjack are provided with prizes being awarded to those individuals with the greatest number of chips at the end of the event. Race Nights can also be carried out as non-commercial prize gaming, provided that the criteria listed above are followed. An example would be the use of archive films without revealing the details of each race. Players can then choose which 'horse' they would like to place a stake on.

## **2. Non-commercial equal chance gaming**

- Only equal chance gaming and race nights are permitted;
- The maximum payment each player can be required to make including entrance/participation fees and payments for gaming (stakes) cannot be more than a maximum of £8 per day per player;
- The maximum total prize fund for the event must be less than £600 (total across all players) unless the event is a final in a series of events and all the participants have taken part on previous days' events. If that is the case a total prize fund of up to £900 would be permitted.
- An example of the above would be the playing of bingo in order to raise charitable funds.

## **How can pubs make a profit?**

Only those individuals or companies who are not involved with the organisation and management of the gaming can retain revenue for private gain. Therefore, if the event/gaming is organised and managed by a third party who is independent of the pub/premises licence holder, such as an external promoter or individual hiring your premises, profits can be retained by the pub from:

- proceeds from refreshment (alcohol) sales:

- proceeds from 'normal' entrance fees (although entry associated with a specific casino night event cannot be retained by the pub)
- proceeds taken from the event/gaming organiser for hiring the premises:
- ALL OTHER FUNDS REALISED MUST BE GIVEN TO A GOOD CAUSE (see above)

## **Prize Gaming**

Licensed premises could consider obtaining a prize gaming permit. This is gaming where the prize is not determined by the numbers of players or by the amount they stake or pay to play.

There are limits to prize gaming under a permit. The participation fee which may be charged for any one chance to win a prize in a game must not exceed £1. There is a limit of £500 on the aggregate amount of participation fees that may be charged in a particular game. A money prize cannot exceed £70. The aggregate amount or value of prizes in a game cannot exceed £500.

Prize gaming cannot span over more than one day and the prizes must be allocated on the day of the gaming.

The application for the permit is made to the Licensing Authority who consult the police. The Licensing Authority will have its own policy on prize gaming permits. You will need to read this before you apply. The fee for the application is £300.

A permit lasts for 10 years with no annual fee payable.

## **Gambling in Clubs**

Members' clubs and Miners' Welfare institutions can apply for a Club Machine Permit which allows three gaming machines of category B4 (£400 jackpot), C or D to be provided on site.

Non-commercial clubs can apply for a Club Gaming Permit instead of a Club Machine permit, which allows one of three gaming machines to be a category B3A (£500 jackpot) machine and also permits equal chance gaming. Club gaming under this type of permit is unlimited in stake and prize (except for bingo) and although there can be no rake or levy taken from stakes, there is no limit to the stake or prizes permitted and limited fees can be charged for participation.

Applications are made to the Licensing Authority. The same Code of Practice which applies to gaming machines in pubs applies to jackpot machines in clubs.

Equal chance gaming is permitted as an exemption to the general prohibition in all Member's Clubs and Miners Welfare Institutes, even where a permit is not held, similar to gambling in alcohol licensed premises outlined above. There are specific stake and prize limits for poker and bingo. The maximum stakes permitted for poker in a club are £250 per day, £1,000 per week, and the maximum prize for a game of poker is £250. A maximum stake of £10 per person per game also applies. For bingo, the limits are £2,000 per week on stakes or prizes. There can be no rake or levy taken from stakes and daily participation fee limits apply, depending upon the type of game played.

Clubs which are established wholly or mainly for the playing of bridge or whist also benefit from unlimited stake and prize limits with limited

participation fees permitted.

The Gambling Commission's Code of practice for equal chance gaming in clubs and premises with an alcohol licence is discussed above.

## **Raffles and Lotteries**

Customer lotteries and incidental lotteries are allowed in licenced premises.

### **Customer Lotteries**

Tickets for a customer lottery/raffle can only be sold to those in the licensed premises and the lottery must be arranged so that no profit is made. Adverts for the lottery may be displayed or distributed on the premises but not elsewhere. There can only be one customer lottery per week, the value of the maximum prize must not exceed £50, and there can be no rollovers.

All the proceeds from customer lotteries must be spent on the prizes, less deductions for reasonable expenses i.e. to cover the costs of the tickets and are not suitable for charity fundraising.

### **Incidental lotteries**

These types of lotteries/raffles can only be used to raise funds for charity and are often held at events such as summer garden parties and fetes. This type of lottery can be held at any type of event held at a pub, whether it is commercial or not, provided that the lottery/raffle is incidental to the main event and that all the lottery proceeds **are only to be used for charitable purposes.**

- Promoters cannot deduct more than £500 in respect of the costs of prizes, although additional prizes may be donated;
- A maximum of £100 may be deducted from the proceeds of the lottery to cover reasonable expenses, such as the price of lottery tickets;
- There cannot be any rollover of the prizes to a draw at a later date;
- All tickets must be sold on the premises where the event is taking place and only during the event itself;
- The results can be announced after an event, enabling other promotions that are also classed as lotteries, such as charity balloon races.

## **Advertising**

All gambling advertising must be compliant with the UK Codes for broadcast and non-broadcast advertising and the Gambling Industry has also produced a code for socially responsible advertising.

All advertising should be carefully considered and a brief summary of some of the advertising criteria is listed below:

- Advertisements must be legal and not misleading;
- Advertisements and promotions should be socially responsible as described in the CAP and BCAP rules;
- Care must be taken not to exploit children and other vulnerable persons in relation to gambling activity; and
- Advertisements should not be specifically and intentionally targeted towards people under the age of 18.

## **Conclusion**

In general, the Gambling Act 2005 provides pub operators with the ability to provide low level gambling that is conducted primarily for incidental

entertainment.

Any failure by operators to ensure that the requirements of the Gambling Act 2005, Regulations and Codes of Practice are not followed could result in enforcement action including (i) the removal of any gaming permissions held or exemptions provided (ii) possible criminal prosecution under the Gambling Act 2005 and (iii) identification of a failure to promote the licensing objectives under the Licensing Act 2003, in particular the prevention of crime and disorder and/or protection of children from harm, which could result in a review of your premises licence being brought by the Licensing Authority.



**15**

# Employing Staff in the Licensed Trade

# Employing Staff in the Licensed Trade

**With our experience in the licensed trade, we realise that one of the key day to day concerns for licensees and operators is employment law and managing staff.**

## **The Contract of Employment**

The moment an applicant unconditionally accepts your offer of a job, a contract of employment comes into existence. The terms of that contract can be oral, express or implied, or a mixture of all three.

You are under a legal duty to provide employees and workers with a written statement of key employment particulars from the first day of employment with you under the Employment Rights Act 1996.

The written statement of particulars, records the key terms of the employment relationship between you and the employee / worker. Certain information must be provided in a single document (commonly referred to as the principal statement). Other information can be given either in the principal statement or in a supplementary statement, which must be provided to the employee / worker not later than two months after the beginning of the employment. Some information does not have to be given in the principal statement, but can be set out in another reasonably accessible document that is referred to in the principal statement.

A “reasonably accessible” document may include a policy within a staff handbook, a notice on a staff notice board or a collective agreement with a trade union. There is no set definition but it is likely to include documents that can be readily obtained on request from HR, or that are available on an intranet to which all employees and workers have access.



The particulars that must be given in the principal statement on day one of the employment are as follows:

- The name of the employer;
- The name of the employee or worker;
- The date employment began (including the date on which continuous employment began, taking into account any employment with a previous employer which counts towards that period. For example, where you took over the business and employees automatically transferred to you under the provisions of TUPE);
- The employee's job title or a brief job description of the work they are employed to do;
- Details of pay, including the scale or rate of remuneration or the method of calculating remuneration and the intervals at which remuneration is paid;
- Details relating to hours of work, including normal working hours, the days of the week the employee or worker is required to work and whether or not such hours of days may be variable (and, if so, how that variation is to be determined);
- The employee's place of work or, where there is a requirement or authorisation to work at various locations, an indication of that and the address of the employer;
- Holiday entitlement and holiday pay, including sufficient detail to enable entitlement, including any entitlement on termination of employment, to be precisely calculated;
- Details relating to incapacity for work due to sickness or injury, including any provision for sick pay;
- Details of any paid leave entitlement;
- Details of any other benefits provided that are not covered elsewhere in the statement, including non-contractual benefits such as company car schemes;

- Details of any probationary period, including its duration and any conditions attached to that;
- Length of notice required by each party to terminate their contract of employment;
- Details of any training entitlement provided by the employer, including any part of that which is compulsory and any other training which the employer requires the employee or worker to complete and which they will not bear the cost of;
- Confirmation of to whom the employee or worker can apply if dissatisfied with any disciplinary decision relating to them and for the purpose of seeking redress of any grievance relating to their employment;
- Where the employee or worker is required to work outside the UK for more than one month, details of the period they are to work outside the UK, the currency in which they are to be paid, any additional remuneration or benefits to be provided by reason of being required to work outside the UK and any terms and conditions relating to return to the UK; and
- Where the employment is not intended to be permanent, the period for which it is expected to continue, or, if it is for a fixed term, the date it is to end.

The particulars that may be given in the principal statement, or in instalments in supplementary statements not later than two months after the beginning of the employment are as follows:

- Details of pensions and pension schemes;
- Details of any collective agreements that directly affect the terms and conditions of employment;
- Any training entitlement provided by the employer (but not details of any compulsory element of that training, or details of compulsory training that the employer will not pay for); and

- Details of any disciplinary rules and applicable procedures.

The written statement may refer the employee or worker to another reasonably accessible document for details of the following particulars:

- Any terms and conditions relating to incapacity for work due to sickness or injury, including sick pay;
- Any other paid leave;
- Terms and conditions relating to pensions and pension schemes;
- Any training entitlement provided by the employer (but not details of any compulsory element of that training, or details of compulsory training that the employer will not pay for);
- Details of any disciplinary rules and applicable procedures (but details of the person to whom the worker can apply if dissatisfied with any disciplinary decision relating to them, or any decision to dismiss them, and the person to with whom the worker can raise a grievance must be set out in the written statement itself); and
- Details of any grievance procedure.

If there are no particulars to be entered in the statement in relation to any of the prescribed particulars, then the statement should say so. For example, if an employee is not entitled to any sick pay, the statement should include a statement to that effect.

If you do not provide the required details in a written statement or contract of employment within the required time frame, an employee can apply to an Employment Tribunal to have the details defined. In addition, if they bring another claim against you in the future (for example, an unfair dismissal claim) they can be awarded extra compensation for any failure to provide them with a written statement of employment particulars.

Employers will often have contractual terms in place applying to the employment relationship, in addition to the minimum statutory particulars set out above. You can include these in the written statement or contract of employment, or in other documents such as a staff handbook.

Having a written statement or a contract of employment in place is also key in the event that a dispute arises between parties in relation to the employee or worker's employment. Without that document, it may be left to the court to decide the terms and conditions applying to the employment.

Having that document in place ensures that both parties know where they stand in relation to key areas of the employment relationship and hopefully minimises the likelihood of such disputes arising in the first place.

## **Annual Leave**

Under the Working Time Regulations 1998, workers (including employees, part timers and temporary staff) have the right to 5.6 weeks paid leave in each leave year (including Bank Holidays). This is the legal minimum that you must offer, although it is open to you to offer more if you wish. This equates to 28 days holiday for someone working full-time, five days a week.

As above, a written statement of employment particulars or contract of employment must state the number of holidays the worker is entitled to, and must also give a start and finish date for the holiday year – for example, 1 January to 31 December. It must also contain sufficient detail to allow a precise calculation of the employee's entitlement, including any

entitlement to accrued holiday pay on termination. Details of holiday entitlement would cover terms relating to notification and approval of holiday and whether it can be carried forward into the next leave year.

Where a worker joins you part way through your leave year, their initial holiday entitlement will be based on the period from their start date until your usual holiday leave year ends. This means that in the first year they will be entitled to a 'pro-rata' entitlement unless the beginning of their appointment coincides with the beginning of your leave year.

There is no legal entitlement to paid leave on bank holidays. Any right to paid time off for such holidays depends on the terms of the contract and you need to be clear in that document whether you require people to work on these days or whether these days form part of the worker's annual holiday entitlement.

Where a worker is not required to work on bank holidays, these days can be counted towards their total annual holiday entitlement.

The calculation for holiday pay can be quite complex. It is based on a legal definition of what amounts to a 'week's pay'. This may be obvious where they work the same hours week in, week out. However, often that is not the case and working hours and / or pay varies week by week. It may also be necessary to calculate the average amount that the worker has been paid in the relevant reference period, which tends to be the preceding 12 weeks or 52 weeks, depending on whether the worker has 'normal working hours' or 'no normal working hours' for the purposes of the relevant legislation, whether their pay varies according to the amount of work done or the time of work and their length of service.

Where somebody's employment ends and they have accrued holiday that they have not taken, they need to be paid for this. In order to calculate this, you will need to look at how much holiday they are entitled to, how long during the holiday year they have been with you and deduct how much they have taken. For example, for a full time employee who is entitled to 5.6 weeks their holiday accrues at 2.33 days per month. If they have been with you for 3 months, this means they are entitled to 7 days holiday and where they have taken 5, this means that they need to be paid for the other 2 days.

If their employment ends and they have taken more than their entitlement, then you need to have a clause in your contract permitting you to deduct the excess from either their final pay or any other payments owed to you.

## **Tips and Tax**

Tips can either be given direct to the staff by the customer or they can be pooled (often called a tronc) and distributed to the staff.

To be a tip the payment must be given freely, so a compulsory service charge is not a tip.

Income tax is always paid on tips. Sometimes National Insurance contributions are payable as well.

When tips are given directly to the staff by customers the member of staff will have to tell the Tax office and pay tax on the tips. You as the employer have no involvement and therefore no responsibility to pay tax or national insurance.

You could suggest to your staff that they keep a record of their tips and explain that it is their responsibility to pay the tax man.

Where tips are included in card or cheque payments and you as the employer pay these to your staff directly, you are responsible for making sure tax is paid through PAYE.

If the tips are pooled together and shared out then the person who looks after the tronc, known as the 'troncmaster', will be responsible for making sure tax is paid through PAYE.

Where the pool is distributed and the employer decides who will receive a share and how much, then the employer must pay national insurance through PAYE as well as tax. It is different if it is someone other than the employer, for instance another employee, who distributes the tips. Then national insurance is not due.

You as the employer must inform the tax office of a pool or tronc system and provide the name of the "troncmaster", the person who distributes the tips.

## **Guide to Disciplining Employees**

### **Introduction**

The number of claims issued in the Employment Tribunal has more than doubled over the last few years. By far the largest category of claim is for some form of unfair dismissal. Of the claims that are successfully brought, the majority are lost (from the employers' perspective) on procedural grounds or technicalities. Employees who are successful in their claims for unfair dismissal can be awarded a compensatory award of up to a maximum of £89,493 or 52 weeks' gross pay, whichever the

lower. Therefore, the actions of employers and the manner in which potential disciplinary matters are handled is extremely important. Employment Tribunals are also public forums with judgments now being published online, so there is the potential for reputational damage to the company in the event that matters are not handled as they should be. This guidance is aimed at providing you with the basic framework for dealing with disciplinary issues. However, we would strongly recommend that you take your own legal advice before any dismissal of a member of staff is effected.

## **Investigation**

A fair investigation is essential before taking any disciplinary action. The following points should be borne in mind:-

- Reasonable and thorough investigation is essential
- If the matter is delicate or very serious, consider suspending the employee on full pay pending the investigation.
- Interview all relevant witnesses and take witness statements as soon as possible after the event.
- Collect all relevant documentation/correspondence/reports.
- Hold an investigatory meeting with the employee concerned, making it clear it is just that – investigatory.
- Ensure that any other explanation is explored and all other forms of relevant evidence are obtained.
- Ensure that there is full disclosure of the complaints to the employee (including witness statements and documents).
- The person conducting the investigation should then make a decision as to whether there is a case to answer and, if so, proceed with the next stage of the procedure.



## **Disciplinary Hearings**

- Arrangements

Once the decision has been made that there is a case to answer a disciplinary hearing should be arranged. The employee in question should be given sufficient notice of the hearing in writing and given the opportunity to be accompanied by a colleague or trade union representative. The employee should be expressly told what the allegations are against him and he should be provided with all documentation which is to be considered by the person holding the disciplinary meeting. The employee should be advised of the possible outcomes of the disciplinary hearing. In addition, he should be given the opportunity to present documentation which he feels supports the representations he is going to make. The employee should be informed who will be holding the meeting and this person should be as independent as possible.

- The Purpose

The purpose of holding a disciplinary meeting should be kept firmly in mind throughout the process. The point is to hear all the allegations against the employee, hear the evidence which has been collected in support of the allegations, hear the employee's version of events and any mitigation they have to offer and then make a decision as to whether or not the allegations have been factually substantiated. It is vitally important that a decision is not made prior to the disciplinary meeting or before all representations are made and duly considered.

- The Decision Making Process

The decision reached must be one which is reasonable in light of the evidence which has been presented. Decisions must be justified, explaining why a particular conclusion has been reached.

Notes should be taken and, if after hearing the evidence it is felt that information is missing, then further investigations should be carried out prior to a decision being made.

- **Communication of the Decision**

The decision should be communicated to the individual either orally at the conclusion of the disciplinary meeting or in writing after further consideration. If the decision is communicated orally then it should be confirmed in writing.

- **Appeal Hearings**

All employees subject to disciplinary action should have the right to appeal the original decision. The appeal should, where possible, be heard by an individual who was not involved in the original investigation or disciplinary meeting. The individual hearing the appeal must have the authority to overturn the original decision. An appeal can be against either the findings of the original meeting or the penalty imposed. Again, at the conclusion of the appeal the individual should be informed either orally or in writing of the appeal decision. If the communication is oral then this should be confirmed in writing subsequently.

## **Paternity and Maternity Rights**

As you will know, pregnant employees enjoy specific rights where their employment is concerned, and you as their employer have a number of obligations towards them.

Any unfair treatment connected with pregnancy or maternity leave has the potential to amount to unlawful discrimination on grounds of pregnancy and maternity and / or sex.

Rights and responsibilities in relation to a pregnant member of your staff begin as you are made aware that an employee is pregnant. You have to allow them paid time off to attend ante-natal appointments and you have to carry out a risk assessment to ensure you are not placing the mother or her unborn child at risk with the tasks and jobs she is required to complete in the workplace.

All mothers to be can take up to 52 weeks maternity leave and as a minimum they must not work the 2 weeks immediately after the birth. This is true for all staff, irrespective of the time you have employed them.

During maternity leave you must keep the employees job open for her to return, unless she decides to take more than 26 weeks maternity leave, in which case you can offer them a suitable alternative if it is not reasonably practicable for you to keep her original job open.

The first 26 weeks of the maternity leave is called ordinary maternity leave, the second 26 weeks is called additional maternity leave. When a pregnant member of staff is off with illness, which is a result of her pregnancy, you must pay them sick pay as you would pay any other non pregnant member of staff.

The pregnant employee must take action herself and tell you certain details. By the 15th week before the baby is due the employee must tell you that she is pregnant, when the baby is due and when she wants her maternity leave and pay to begin.

The employee must give 28 days' notice of the date she wishes to receive Statutory Maternity Pay. Statutory Maternity Pay can be claimed if she has been continually employed for 26 weeks by the 15th week

before the baby is due and she satisfies the relevant earnings criteria. Statutory Maternity Pay is paid for up to 39 weeks.

For the first 6 weeks you must pay Statutory Maternity Pay at 90% of their average weekly earnings (before tax), then for the remaining 33 weeks you must pay £151.97 (from April 2021) a week or 90% of their average weekly earnings, whichever is lower. Statutory Maternity Pay is subject to tax and National Insurance. You are entitled to claim back Statutory Maternity Pay from the government.

Ideally you should be in contact with your staff on maternity leave. Employees can work up to 10 days during their maternity leave, These days are called 'keeping in touch days'. Keeping in touch days are optional and will need to be agreed by both the employer and employee. The employee's right to maternity leave and pay is not affected by taking keeping in touch days.

## **Paternity**

Partners (including same sex partnerships) of the mother and a child's biological father are entitled to 2 weeks paid paternity leave. To benefit, employees must give the correct notice and have been continuously employed for at least 26 weeks by the 15th week before the the baby is due.

Statutory Paternity Pay is £151.97 (from April 2021) a week or 90% of their average weekly earnings, whichever is lower. As with maternity pay, paternity pay can be reclaimed from the government and National Insurance and Tax are payable.

Fathers' paternity leave can be taken by your staff as a 1 or 2 week block and must be taken within the first 56 days of the birth. They must take their leave in one go. A week is the same amount of days that you normally work in a week. For example, a week is 2 days if you only work on Mondays and Tuesdays.

## **Shared Parental Leave**

Since 6 April 2015 eligible mothers, fathers, partners and adopters have been able to choose how to share time off after their child is born or adopted. Eligible mothers can elect to end their maternity leave to create parental leave which they can share with the child's father or other person who at the time of the child's birth is the mother's spouse, civil partner or partner. They can share up to 50 weeks of leave and up to 37 weeks of pay between them. This means that eligible fathers and partners have a legal right to request more leave from work in the first year following their child's birth. Eligible mothers may choose to return to work and have the father/partner take their leave in their place. Eligible parents may request to mix work with leave in the first year of the child's life, returning to work between periods of leave if they wish.

To be eligible for shared parental leave and statutory shared parental pay, both parents must share responsibility for the child at birth and meet work and pay criteria – these are different depending on which parent wants to use the shared parental leave and pay.

## **Scenario 1 – Drinking On Duty**

It comes to your attention that a member of your bar staff is drinking alcohol whilst on duty. What steps should you take in an attempt to prevent this problem from escalating or reoccurring?

Answer:

Any employee who attends work under the influence of alcohol or becomes so affected whilst at work could potentially be dismissed for gross misconduct. It is helpful to have a disciplinary procedure or policy that sets out the type of conduct that you consider would amount to serious or gross misconduct. You should first undertake a thorough investigation to ensure you have a complete picture of the incident and only proceed to formal disciplinary proceedings if you feel there is a case to answer. You can suspend the employee on pay while you investigate if you consider it may not be possible to properly investigate while they are there or they pose a real risk to the business.

In dealing with this gross misconduct, you should refer to the guidance notes on how to deal with disciplining employees (write to them outlining the reason for the disciplinary and inviting them to a meeting etc.) which are on our website. If you consider that there has been gross misconduct on the employee's part and that they have provided insufficient mitigation and the situation is so serious that you cannot continue to employ them, then you may proceed to dismiss them summarily, i.e. without notice or payment in lieu of notice and without prior warnings.

You should be aware of the individual's right to appeal and ensure that this procedure is followed correctly and that you act consistently.

Remember that employees must be informed of their right to be accompanied to disciplinary and disciplinary appeal meetings by a colleague or trade union representative.

## **Scenario 2 – Cash Shortfall**

Whilst completing the process of “cashing up” the tills one evening, you notice that there is a significant shortfall in the amount present. How should you address this issue?

Answer:

Ideally you should instigate an investigation of the shortfall. It may be appropriate to suspend the employee on full pay to enable you to investigate the matter thoroughly. Suspension should not be an indication of guilt and should only last for as long as reasonably necessary to facilitate investigation.

Investigations should be thorough and relevant – consider speaking to potential witnesses, review any CCTV which might assist you, look at who was operating the till that day etc.

If you feel that you have sufficient evidence and have formed a reasonable belief that a particular employee is guilty of theft then this act may be treated as gross misconduct, possibly entitling you to dismiss the employee summarily, as in scenario 1 provided you have followed a fair disciplinary procedure and it is fair in all of the circumstances to dismiss. Note the right of appeal and right to be accompanied.

## **Scenario 3 – Second Job**

One of your employees is continually attending work in a tired state and this is impacting upon their work performance. When you question the employee on this point, you discover that he has another job. How should you deal with this issue?

Answer:

It is imperative that you ensure that the individual is not working a number of hours in excess of the Working Time Regulations. If the individual has changed their working hours since they began employment with the Company, they should have informed you of this.

If the employee only works part time for you, you may have no issue with them undertaking work elsewhere provided it does not have a negative impact on the work they do for you. The best way to address the problem initially is by discussing the situation with the employee in question and finding out what hours they are working and raising your concerns about their performance. Initially, you may feel the matter can be resolved through a verbal warning stating that the employee review their working arrangements in order to ensure that their other job no longer impacts upon their performance at the pub. If the problem persists then you may choose to follow the relevant procedures outlined on our website.

### **Scenario 4 – Inappropriate Dress**

A male member of staff decides to grow his hair. Initially you do not address the issue; however, it reaches the stage where its length and condition is such that it is beginning to cause offence to customers and other members of staff. What action should you take against this member of staff?

Answer:

It is an optional clause in the contract of employment on our website that all individuals dress appropriately for work and maintain appropriate



standards of personal hygiene. Whilst having long hair is clearly not a disciplinary offence (male or female!), if someone's appearance or hygiene results in complaints or could present health and safety issues (hair in food?!), then you may have cause to address this directly with the employee. If you have the appropriate clause in your employment contract and these requirements are not met then you are entitled to address them in the same way as you would treat any other disciplinary issue, i.e. by following the disciplinary procedure. However, you should be aware of the potential need for increased discretion in bringing these issues to the attention of the employee. You should further bear in mind that deviations from your usual rules may be required to accommodate racial and gender-specific clothing requirements.

### **Scenario 5 – Threats of Violence**

A member of your staff receives a threat of personal violence from one of your regular customers. What action should you take?

Answer:

The fact that the customer is a regular should be largely irrelevant in relation to the action you take to deal with this issue.

A customer who threatens personal violence toward a member of staff or another customer should be dealt with accordingly.

You should consider asking the individual to leave the premises. In doing this you should avoid physical intervention wherever possible. If they refuse to leave the premises, inform them that you will call the police. If they still refuse to leave, you should then proceed to telephone the police and ask them to attend to remedy the situation.

It would make sense in a situation like this to speak to the member of staff involved to check that they are okay to continue working and see if they need any support moving forward.

DRINK  
REREAT



16

# Glossary of Definitions

# Glossary of Definitions

## **Associate Member**

Someone allowed entry in to a qualifying club by virtue of being a member of another recognised club.

## **Authorised Person**

Enforcement Officers from the Licensing or other authority. eg. Environmental Health Officer, or Fire Officer.

## **Club Gaming Permit**

Permit granted by the local Licensing Authority to a Qualifying Club which allows increased limits for stakes, participation fees and prizes for gaming and up to 3 gaming machines from categories B3A (only one), B4, C or D in their premises.

## **Club Machine Permit**

Permit granted by the local Licensing Authority which allows increased limits for stakes, participation fees and prizes for Equal Chance Gaming and up to 3 gaming machines from Categories B3A (B4, C or D in their premises). (Commercial Clubs may not operate Category B3A machines).

## **Club Premises Certificate**

Authorisation from the local Licensing Authority for a Qualifying Club to carry out Qualifying Club Activities.

## **Designated Premises Supervisor**

The person named on the Premises Licence as being the person with ultimate responsibility for the running of the premises. He or she must hold a Personal Licence issued under the Licensing Act 2003. There can only be one Designated Premises Supervisor for each premises.

## **Equal Chance Gaming**

Gaming where each player has an equal chance of winning and where there is no 'bank'. Examples of games of equal chance include poker, bingo, bridge, whist, cribbage and dominoes, whereas roulette and pontoon are not equal chance gaming.

## **Exempt Gaming**

Equal Chance Gaming permitted in licensed premises without the need for a permit, licence or authorisation, subject to strict limitations on stake, prize and participation fees.

## **Gaming Machine Notification (Automatic Entitlement)**

Licensed premises have the right to have 1 or 2 Category C or D gaming machines if they notify the council of their intention to do so and pay a fee. Entitlement can be revoked.

## **Guidance**

National Guidance to the Licensing Act 2003 published under section 182 of the Licensing Act 2003. It has been substantially amended and gives assistance in understanding the Act.

## **Licensable Activities**

Activities undertaken at premises which require the authority of a Premises Licence, Club Premises Certificate or Temporary Event Notice.

## **Licensed Premises Gaming Machine Permit**

Permit obtained from the Licensing Authority permitting 3 or more Category C or D gaming machines in a licensed premises.

## **Licensing Authority**

The Local Authority where a particular premises is situated or where a Personal Licence holder habitually resides.

## **Licensing Board**

A board of council members who determine licensing applications and oversee the licensing regime under the Licensing (Scotland) Act 2005 in its area.

## **Licensing Committee**

A committee of not less than ten and not greater than 15 Council members to which the discharge of the licensing function is delegated by the Council. The whole committee may sit or delegate its responsibility to sub committees consisting of at least three members.

## **Licensing Objectives**

These are the fundamental principles upon which the licensing system is based. There are four in England and Wales;

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm

- Public safety

A fifth objective in Scotland is;

- Protecting and improving public health

## **Licensing Standards Officers**

The operation of licensed premises is overseen by council appointed Licensing Standard Officers (LSOs). The role of the LSO has powers to ensure compliance with the conditions of licences including the power to apply for a review of a Premises Licence.

## **Mandatory Conditions**

Conditions applied to every Premises Licence and Club Premises Certificate.

## **Operating Schedule**

Document incorporated in an application form prepared by the Applicant for a Premises Licence or a Club Premises Certificate detailing how the premises will operate (hours, Licensable Activities etc) and how the Applicant will promote the Licensing Objectives. Details in the Operating Schedule will form the basis of conditions on the Premises Licence.

## **Personal Licence (Licensing Act 2003)**

A licence issued by the Licensing Authority under the Licensing Act 2003 enabling an individual to sell alcohol and authorise the sale of alcohol at premises with the benefit of a Premises Licence.

## **Personal Licence (Licensing (Scotland) Act 2005)**

A licence issued by the Licensing Board under the Licensing (Scotland) Act 2005 authorising an individual to supervise or authorise the sale of alcohol.

## **Premises Licence (Licensing Act 2003)**

A written authorisation from the Licensing Authority allowing a premises to carry out Licensable Activities.

## **Premises Licence (Licensing (Scotland) Act 2005)**

A licence granted under the Licensing (Scotland) Act 2005 by the Licensing Board permitting the sale of alcohol.

## **Premises Manager**

Every Premises Licence granted under the Licensing (Scotland) Act 2005 must specify who is to be the Premises Manager. There can only be one Premises Manager per premises and that individual may not, at any one time, be the Premises Manager of more than one licensed premises. The Premises Manager must hold a personal licence issued under the Licensing (Scotland) Act 2005.

## **Provisional Statement**

A preliminary approval by the Licensing Authority under the Licensing Act 2003 on the basis of a set of plans showing proposed alterations to existing premises or premises which have not yet been built. A Premises Licence application will still be necessary even though a Provisional Statement has been granted.

## **Provisional Premises Licence**

A Premises Licence granted under the Licensing (Scotland) Act 2005 which are under construction or conversion which is not official until it has been confirmed by the Licensing Board.



## **Qualifying Club**

A club must be established in good faith with at least 25 members and adhere to membership requirements and an alcohol supply policy as per the requirements of the Licensing Act 2003.

## **Qualifying Club Activities**

The supply or sale of alcohol by or on behalf of a Qualifying Club to a member or guest of a member and the provision of regulated entertainment on behalf of a club to members or guests of members.

## **Responsible Authority**

Police Officers, Fire Officers, Environmental Health Officers, Trading Standards Officers, Planning Officers, the Licensing Officer, the Primary Care Trust (in England) or Local Health Board (in Wales) and representatives of the Child Welfare and Protection Department of the Authority and the Secretary of State (Home Office Immigration Enforcement).

## **Review of Premises Licence**

An application made by a Responsible Authority or residents or business, asking the Licensing Authority to reconsider the conditions on a Premises Licence or Club Premises Certificate and whether that licence should be revoked or suspended for up to three months.

## **Statement of Licensing Policy**

Document published by the Local Authority detailing how the licensing regime will work at a local level.

## **Summary Review**

The Police may apply to the Licensing Authority for the summary review of a premises licence where they believe the premises are associated with serious crime, serious disorder or both. This is a form of 'fast track' review and the Licensing Authority must decide, within 48 hours, whether to take any interim steps pending the outcome of the full review of the premises licence, which must be concluded within 28 days of the receipt of the application for review.

## **Temporary Event Notice (TEN)**

An authorisation allowing Licensable Activities to take place in a particular premises for a defined period. This can either extend the permitted hours at licensed premises or alternatively licence unlicensed premises for a limited period of time. There are limits per calendar year on the number of times a premises may issue a TEN. The maximum number of people permitted on premises covered by the Temporary Event Notice is 499 including staff.

# PopplestonAllen

## Nottingham

37 Stoney Street  
Nottingham  
NG1 1LS

## London

The Stanley Building,  
7 Pancras Square, Kings Cross,  
London  
N1C 4AG

0115 953 8500 | 020 3859 7760

[popall.co.uk](http://popall.co.uk)