



PopplestonAllen

LTG 2010

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For years we've taken the legislative detail and
made it more refreshing to digest

Introduction

We are delighted by the responses we have received over the years to previous editions of our Licensed Trade Guide, initially relating to the old law and, more recently to the Licensing Act 2003. Although this handbook was originally intended for managers, owners and operators of licensed premises, we know that it is being regularly used by the police and by councils. Whilst we are flattered that it has been so well received, we are anxious to stress that it is not intended to be a text book on licensing law. Instead, it provides some basic guidelines to the areas where difficulty most frequently arises, and explains where further help can be sought to obtain, extend or protect your licence. It is no substitute for proper legal advice on any point of difficulty. We believe the law to be correctly stated at 31st May 2010 but interpretations of the law change rapidly and it is always advisable to check with us before taking any major step.

Licensing law changes continually, not just by statute but also by decisions made in cases before the courts. This is particularly true at the moment. Mandatory conditions, regulations, guidance and Local Authority policies need to be considered as well. There is little doubt that there are a number of grey areas at present which will become clearer over the next few years. A number of matters await the decision of High Court judges. One thing is certain: the powers of intervention by Local Authorities, statutory authorities and residents has never been greater.

Every licence holder and their employees should be aware of this. On the other hand the operator has the theoretical ability to operate the business to produce maximum profit unrestricted by old fashioned rules.

Don't hesitate to contact us if you have any licensing or other legal query – it could help you to avoid a costly mistake. Poppleston Allen is always available to help the licensed trade. You can contact us on our daytime telephone number 0115 953 8500, our London telephone number 0207 936 5869, our out of hours telephone number 07795 011252 (for changing the Designated Premise Supervisor), and Licence999 number 03337 007 999 for genuine emergencies 24/7.

We maintain our award winning website at www.popall.co.uk and you can subscribe to our regular eNews for an easy and effective way to keep up to date with the latest developments in licensing law and how they affect you.


31st May 2010



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**Poppleston Allen
Licensing Solicitors**

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In addition you can receive advice from our specialist training service at www.popalltraining.co.uk

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01

The Licensing Authority

There are well over three hundred different Licensing Authorities in England and Wales. They are now responsible for all forms of licensing regulation under the 2003 Act, 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 under the Act and must take into account certain matters in so doing.

Licensing Objectives

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

- > 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 necessary to promote one or more of them.

Guidance

The Secretary of State for the Department of Culture, Media & Sport has produced Guidance on the interpretation of the Act, to provide assistance to Local Authorities, applicants, and all concerned with the Act to try and ensure that it is dealt with consistently around the country. The Home Office, more concerned with enforcement, has also provided some Guidance on mandatory conditions.

The first Guidance was published and approved by Parliament in July 2004. This has been updated several times since. The latest Guidance was approved on 30th March 2010. 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 DCMS website.

Licensing Policy

Each Local Authority produces its own licensing statement of policy which must be revised every three years. The first policies were produced in January 2005 and many were updated and amended in 2008 further amendments will be proposed for the beginning of 2011. Local residents, business people, the licensed trade, responsible authorities and other authorities in the area must, or should, be consulted about the contents of the policy.

The policies are intended to be for everyone's benefit.

The Guidance provides advice on what the Local Authority should include within its licensing policy. Most authorities set out some information about their own areas. They then make it clear that there are other partnership strategies to try and control anti-social behaviour. It is very easy when faced by numerous angry residents for the council to use the licensing of alcohol as the prime mechanism for solving anti-social behaviour in their borough.

In addition, authorities in their policies usually reinforce the flexible nature of trading hours. But they frequently indicate any particular areas which give rise to problems of crime and disorder and nuisance simply because of the concentration of licensed premises within that area. If they have

sufficient evidence produced to them by their consultees the Authority can adopt a special policy, which would allow them to refuse applications for new premises and certain variation applications, eg those relating to hours or capacities unless you, the Applicant, can show that the grant would not offend against the licensing objectives. This is called a cumulative impact policy. Councils may also decide to order closure of all premises of a particular type between 3am and 6am when this provision comes into force.

These policies contain helpful information for the most part. Most councils include a list of all the authorities who need to be served, and give details of how application forms can be obtained, including downloading them from a website.

Some council policies are over-prescriptive in the requirements they make of the applicants. If there is no objection to your application then they are obliged to grant it essentially on the conditions you offered. Some councils 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 - telephone Poppleston Allen on 0115 953 8500.

Decision Making

Only if representations (objections) are made concerning your application will the licensing committee need to meet to make a decision. But be warned, some council departments routinely put in such objections to enable applications to have proper consideration. Any Councillor can now make representations.

In the absence of representations your application will 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 Local Authority should such a representation be lodged.

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

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