

THE ALCOHOL & ENTERTAINMENT LICENSING BILL

The Bill received its second reading in the House of Lords on the 26th November 2002. Third reading and reports stages should be completed during July 2003 and the Bill should receive Royal assent by August 2003 with an implementation date approximately 12 months later.

There are currently over 50 statutes in the existing law of licensing and alcohol, the reform is intended to simplify and streamline the current procedures.

Public Entertainment is to be re-named Regulated Entertainment which will include:-

1. Performance of a play (including rehearsal)
2. Exhibition of a film
3. Indoor sporting events
4. Outdoor boxing or wrestling

The Bill also defines what is a licensable activity. These are:-

1. The sale by retail of alcohol
2. Supply of alcohol by or on behalf of a club otherwise than by of sale
3. The provision of late night refreshment between the hours of 11.00 pm and 5.00 am
4. The provision of organised entertainment.

The licensing powers in respect of the sale of alcohol will be transferred from Licensing Justices to Local Authorities, The Magistrates Courts will also give up responsibility for registered members clubs.

Local Authorities in addition to the new responsibilities will keep control of Public Entertainment's, Theatres, Cinemas, Night Cafes, and other Late Night Refreshment Houses.

The Government has stated that there are to be four clear objectives that should underpin the new system to ensure clarity and consistency. They are:-

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

EXEMPTIONS

Within the Act there will be a number of exemptions from licensing. These are:-

1. Religious services
2. Live broadcast TV
3. Films for educational, museum or art gallery use
4. Moving vehicle on a public Highway, ie a carnival float
5. Incidental recorded music

APPLICATIONS

Part 3 of the Bill deals with applications including grant of and variations of premises licences. Councils will have to consult with various statutory bodies including the Police,

Fire Authority and Environmental Health as well as residents and local businesses depending upon the nature of the business.

The Bill also provides for local residents, businesses and expert bodies to have the power to request a Local Authority to review an existing licence where problems or material changes arise. Such a review could result in no action, or a warning or an improvement notice being served, a modification of the licence or ultimately its revocation.

ALL DECISIONS OF THE LICENSING AUTHORITY WILL BE SUBJECT TO APPEAL THROUGH THE MAGISTRATES COURTS.

The Bill will abolish permitted drinking hours, increasing the options available to business and the public in how they spend their leisure time , so encouraging the development of a more diverse late night economy, however, any changes are subject to objections and an appeal procedure.

In addition the Bill will also abolish the two performer rule, therefore any premise that provides entertainment currently exempt will have to apply for a license to vary its existing licensing conditions as registered with the Licensing Justices. However premises that currently hold an Entertainment Licence will in future only have to apply to the Local Authority for all there licensing needs greatly streamlining the existing process.

NATIONAL/ LOCAL STATISTICS

There are currently in excess of 155,000 premises licensed to sell alcohol along with 22,000 registered members clubs, 5,000 late night refreshment houses, 9,000 public entertainment licences, 37,000 temporary public entertainment licenses and 40,000 occasional licences (alcohol).

It is anticipated that there will be in excess of 500 licenses to be issued in total within the South Cambridgeshire District, however exact figures are not yet available from the Licensing Justices and exact figures will be circulated when known.

THE NEW SYSTEM.

The new system will fall into 2 categories. These are:-

1. Premises Licence
2. Personal Licence

PREMISES LICENCE

A premises licence will be held by “a person who carries on a business which involves the use of premises for licensable activities”

This will cover a wide range of premises from pubs to village halls, hotels to leisure centres.

When applying for a premises licences the procedures to be followed are expected to be as follows:-

1. An application form (format yet to be prescribed) along with a fee (yet to be determined) will be sent to the Local Authority. The application will include an operating plan, a plan

of the premises, the type of activities that will take place and whether or not alcohol is to be sold (permission from the premises supervisor would be required if alcohol is to be sold). Also details regarding the period of time that a licence is to exist for will also be required (this may be for perpetuity)

2. The responsible authorities/interested will be notified.
3. If within a set period (yet to be prescribed) no representations are made then a licence MUST be granted subject ONLY to the conditions consistent to the operating schedule of the Local Authority or any mandatory conditions.

OBJECTIONS

Should objections be received then it will be the duty of the Local Authority to consider whether they are relevant. It is clear from the wording of the Bill that frivolous or vexatious representations are not to be considered, however, what is not yet clear is the guidance on what is frivolous or vexatious!

PERSONAL LICENCES

A personal licence is to be a licence issued to an individual (similar to your driving licence in that it does not refer to what you drive, just that you are licensed). The licence is to be AUTOMATICALLY granted to persons who have attained a (yet to be prescribed) Licensing Qualification, possibly similar to that currently run by the British Innkeepers Institute, have not been convicted of a relevant offence ie fraud, violence, drugs etc or had a Justices License revoked in the previous 5 years.

The personal licence will be granted for a period of 10 years and will be required only where alcohol is sold.

Current licensees will have grandfather rights and have no need to attain a Licensing certificate.

A personal licence holder may apply for up to 50 events per year.

A personal licence holder will be required to be licensed only in the district at which they reside, which poses the question of how Local Authorities will keep track of where they actually work. This a matter still being debated.

WHAT DO WE HAVE TO DO

The plan by Central Government is for a transition period of approximately 12 months from the royal assent expected in July/August 2003 whereby both the Magistrates Licensing and the Local Authority system will run along side each other. This is to give the Local Authority time to process all the applications and deal with appeals etc. During this time the Local Authority also has a number of objectives to achieve before the implementation date in 2004. These are primarily:-

1. To develop a policy in relation to licensing. This will have to involve consultation with local residents, business, Police and other statutory bodies

2. To carry out necessary research to ensure consistency with other legislation ie Human Rights act
3. The drafting of a policy
4. Any re-consultation
5. Monitor and review of the policy

It will be the responsibility of the Local Authority to produce a policy document every 3 years.

When considering a policy there are already some guidelines issued by Government for consideration. These include:

1. A policy must not cut across the principal of individual consideration by the adoption of arbitrary quotas on numbers of licensed premises
2. It should not inhibit the principle of children having free access to licensed premises save where there are particular reasons to exclude them, ie table dancing premises.
3. A policy should demonstrate proper integration with local crime prevention, planning, tourism and cultural strategies. It should for example provide for a proper separation of the planning and licensing regimes to avoid duplication and inefficiency
4. It should allow an emphasis on the importance of longer opening hours as a key mechanism for combating binge drinking, disorder and anti social behaviour
5. It may confirm the Licensing Authorities requirements for stricter conditions for late licenses in residential areas but should not enter into a zoning scheme.
6. It should support the need for tailoring licence conditions proportionately to individual premises and the activities taking place.
7. It should promote the benefits of agreed protocols between the Local Authority and the Police with regards to enforcement including the powers to shut premises immediately.

This is by no means exhaustive but illustrates the type of conditions to be considered in developing a policy.

During the transition period a Licensing Authority is obliged to grant licenses to premises where there are no material changes to the licences currently held under the Magistrates system. Only where variations are required will the consultation process be invoked.

Effectively BOTH premises and personal licence holders will receive “grandfather rights” during the initial transfer from Magistrates to Licensing Authority.

UNRESOLVED ISSUES

The Bill is still subject to a lot of secondary legislation, there is still a lot to come! For example the word prescribed is used 82 times and the word regulations appears 56 times. A perfect example of this is clause 17 (5) which states:-

(5) Regulations may-

(a) require an applicant to advertise within the **prescribed** period-

(i) in the **prescribed** form

(ii) in a manner which is **prescribed** and is likely to bring the application to the attention of the interested parties likely to be affected by it.

FEES.

The discussion around fees is still unresolved as is the question of financial support during the transition. The favoured approach on fees by Central Government is for nationally set fees and an annual fee for premises only (however it is suggested that an unpaid annual fee is only recoverable through the civil courts). At present an annual fee is charged and the licence may be revoked if it is unpaid.

Other issues yet to be resolved include :-

1. A definitive set of Government guideline for Local Authorities
2. How best to deal with occasional licence applications
3. The need for increased staffing levels
4. Premise capacity levels
5. Exact wording of many parts of the Bill
6. Licensing Committee structure, current proposal is for a minimum of 15 members to be available to sit in groups of 3 when determining appeals
7. The time period by which a Local Authority must decide an application is 2 months, what is still being debated is exactly what happens if the Local Authority fail to keep to that timescale, ie is the licence automatically granted or refused?