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# BRIEFING

## LICENSING ACT 2003

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**Licensable Activities**

3 The Act will apply to **licensable activities** which are defined as:

- the sale by retail of alcohol;
- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
- the provision of regulated entertainment; and
- the provision of late night refreshment.

- 4 "Regulated entertainment" includes, broadly, any public entertainment or entertainment for consideration with a view to profit (including raising money for charity). "Late night refreshment" includes the supply of hot food or hot drink between the hours of 11pm and 5am.

### Licensing Authorities

- 5 **The Act will transfer licensing powers to local authorities from licensing justices in respect of the sale of alcohol and from magistrates courts in respect of registered members' clubs. Local authorities retain responsibility for public entertainment, cinema and night cafés and other late night refreshment outlets.**

### Licensing Objectives

- 6 The Council as a licensing authority will be under a duty to carry out its functions in accordance with the **licensing objectives** set out in the Act, which are:
- the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.
- 7 In having regard to the licensing objectives the licensing authority must consider its own licensing policy and any guidance issued by the Secretary of State. Draft guidance has been issued (see paragraph 46 below).

### Statement of Licensing Policy

- 8 As a licensing authority the Council must determine and publish a statement of its licensing policy

every three years. The policy must be approved by the full Council. In determining its policy it must consult the local police, fire authority, licence holders and businesses and residents. The Council must keep its licensing policy under review and make revisions to it as appropriate. It must also consult on any revisions and publish a statement detailing any revisions. The government may issue regulations (yet to be published) governing the determination and revision of licensing policies.

### Licensing Committee

- 9 The Council must have a **licensing committee** consisting of between 10 and 15 of its members. The Council may delegate all of its licensing functions to the committee except for the determination of its licensing policy, which must be approved by the full Council. The committee may delegate any of its functions to sub-committees consisting of three committee members and the sub-committees may in turn arrange for the discharge of certain functions by an officer of the Council. The government may issue regulations (not yet published) in relation to the proceedings of licensing committees and sub-committees.
- 10 The delegations to the Council's Licensing Committee will need to be revised to comply with these requirements when the Act comes into force.

### Register

- 11 The Council is required to keep a **register** which must include among other things a record of each licence issued by it and any licence applications received by it. The register must be open for inspection free of charge by any person during office hours without payment.

## Premises Licence

12 Any licensable activity apart from a permitted temporary activity or a licensable activity carried on at a members' club must be carried on under a premises licence. The application for a premises licence must be made to the licensing authority where the premises is situated.

13 Any person (including a company) may apply for a premises licence. If the applicant is an individual he/she must be aged 18 or over. The application must be accompanied by an operating schedule setting out the licence requirements, including hours of opening.

14 If no representations are made, the licensing authority must grant the licence subject only to the conditions as stated in the operating schedule and the mandatory conditions (see paragraph 19 below). Unless the licence is stated to be for a fixed period it will be of indefinite duration (unless revoked).

15 If any representations are made by any interested parties or responsible authorities within a prescribed period (to be fixed by as yet unpublished government regulations) and provided the representations relate to the licensing objectives and are not in the licensing authority's opinion frivolous or vexatious, the licensing authority must hold a hearing unless it agrees with the parties involved that a hearing is unnecessary. Having regard to the representations the licensing authority may then:

- grant the licence subject to the conditions set out in the operating schedule modified to the extent that it considers necessary for the promotion of the licensing objectives and

subject to the mandatory conditions;

- exclude from the scope of the licence any of the licensable activities to which the application relates;
- refuse to specify any person in the licence as the premises supervisor; or
- reject the application.

16 "**Interested parties**" include people living in the vicinity or involved in a business in the vicinity or their representatives.

17 "**Responsible authorities**" include the local police; fire authority; the Health and Safety Executive; the local authority in its capacity as planning authority and the body responsible for environmental health; and a body which is responsible for or interested in the protection of children from harm in the authority's area e.g. the Area Child Protection Committee.

18 Local interested parties and responsible authorities will have the power to request the licensing authority to review existing licences when problems arise. If there is a review the licensing authority may:

- take no action;
- give a warning or request for improvement to the licence holder;
- modify or suspend the licence; or
- revoke the licence.

## Mandatory Conditions

19 The mandatory conditions are:

- where the licence authorises the supply of alcohol:

- ◆ no supply of alcohol may be made unless there is a **designated premises supervisor** in respect of the premises licence or at a time where the designated premises supervisor does not hold a **personal licence** or his personal licence is suspended; and
  - ◆ every supply of alcohol must be made or authorised by a person who holds a personal licence.
- where the licence imposes a condition requiring door supervision, a condition that any door supervisors must be licensed by the Security Industry Authority.
  - where the licence authorises the exhibition of films, a condition that the admission of children to the exhibition of any film is restricted in accordance with any recommendation made by the relevant film classification body or, if not applicable, the local authority.

### Provisional Statement

- 20 Any individual over the age of 18 who is interested in premises under construction or being extended or altered for the purpose of being used for one or more licensable activities may apply for a **provisional statement** which, if made, may allow any subsequent application for a premises licence by that person to be expedited.
- 21 The application for a provisional statement must be in a form prescribed by regulations and accompanied by a schedule of works to be carried out on the premises. Any interested parties or responsible authorities can make relevant representations as part of the application process. If no relevant representations are

made the licensing authority must issue the provisional statement.

- 22 If the applicant subsequently applies for a premises licence and the works described in the schedule of works have been satisfactorily completed, further relevant representations will be excluded from the application process unless the circumstances have changed since the application for a provisional statement was made.

### Personal Licence

- 23 A personal licence is a licence which permits the individual holding it to supply alcohol or authorise the supply of alcohol in accordance with a premises licence.
- 24 Unlike an application for a premises licence, which must be made to the licensing authority where the premises is situated, an application for a personal licence must be made to the licensing authority where the individual is ordinarily resident. The licensing authority must grant the licence if it appears to it:
- the applicant is aged 18 or over;
  - he possesses an accredited licensing qualification;
  - no personal licence held by him has been forfeited in the previous five years; and
  - he has not been convicted of any relevant offence.

The definition of "relevant offence" is wide-ranging; all relevant offences are listed in Schedule 4 to the Act.

- 25 If the applicant does not meet any of the first three conditions listed above in paragraph 24 the application must be rejected. If he

does not meet the fourth condition the licensing authority must give the police a notice to that effect. If the police do not object to the issue of the licence within 14 days the licensing authority must grant the licence.

26 If the police issue an objection notice the licensing authority must hold a hearing unless the police and the authority agree a hearing is unnecessary. The authority must reject the application if it considers it necessary for the promotion of the crime prevention objective but in all other cases must grant the licence.

27 The initial duration of a personal licence is for ten years but it can be renewed for subsequent periods of ten years at a time. The licence may be revoked if the holder commits a relevant offence after it has been granted and, after consultation with the police, the licensing authority considers revocation necessary to promote the crime prevention objective.

### Permitted Temporary Activities

28 Any use of premises for one or more licensable activities in a period not exceeding 96 hours for up to 500 people must be carried out under a **temporary event notice**. The activity proposed will be a **permitted temporary activity** provided that:

- the individual ("the premises user") giving the notice is over 18;
- the notice is in the prescribed form and, where one of the proposed licensable activities is the supply of alcohol, provides that no supplies of alcohol may be made from the premises unless they are under the authority of the premises user;

- the notice is given to the licensing authority in duplicate and to the police at least 10 working days before the proposed event and is accompanied by the prescribed fee;

- the notice is acknowledged by the licensing authority within one or two working days of receipt;

- the notice has not been withdrawn; and

- no counter notice has been given.

29 The notice will be void if the event is within 24 hours of any other event specified in another temporary event notice given by the same premises user.

30 If the police believe that the event would undermine the crime prevention objective, they must give an objection notice stating their reasons to the licensing authority and the premises user. The licensing authority must hold a hearing unless it is agreed with the police that a hearing is unnecessary. The temporary event notice may be modified by agreement between the premises user and the police prior to the hearing or decision to dispense with a hearing in which case the police objection notice will be treated as having been withdrawn.

31 Having regard to the objection notice the licensing authority may give the premises user a counter notice (with reasons) if it considers it necessary for the crime prevention objective. If the licensing authority decides not to give a counter notice it must give the premises user and the police notice of its decision.

32 The licensing authority must also give a counter notice if:

- the premises user holds a personal licence and has already given 50 temporary event notices in the same calendar year; or
- the premises user does not hold a personal licence and has already given 5 temporary event notices in the same calendar year.

If the event period in the notice straddles two years the temporary event notices in both years must be taken into account.

### Children

- 33 It is an offence under the Act to permit children under the age of 16 who are not accompanied by an adult to be present on premises used exclusively or primarily for the supply of alcohol for consumption on the premises under the terms of a premises licence, club premises certificate or temporary event notice at a time when they are open for the supply of alcohol for consumption there. It is also an offence to permit children under the age of 16 who are not accompanied by an adult to be present on other premises supplying alcohol for consumption on the premises under the terms of a premise licence, club premises certificate or temporary event notice between the hours of 12 midnight and 5am.
- 34 Subject to the offences described in paragraph 33, access by children to licensed premises will be permitted unless the premises operator when making an application for a premises licence decides to exclude them or the licensing authority imposes conditions preventing or moderating access by children where necessary to promote the licensing objectives, one of which is the safeguarding of children from harm.

35 The Act introduces other specific offences relating to children including:

- selling or allowing the sale of alcohol to or purchasing alcohol for children;
- consuming alcohol if under the age of 18 on licensed premises unless aged 16 or 17 and drinking beer, wine or cider with a table meal.

### Club Premises Certificate

36 Certain **qualifying club activities** are subject to less stringent requirements than other licensable activities, which means that clubs which qualify will not be required to obtain a full premises licence to carry out those activities. Instead they will have to apply for a **club premises certificate**. Clubs will nevertheless have to bear in mind the licensing objectives.

37 The following licensable activities are defined as **qualifying club activities**:

- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club for consumption on the premises where the supply takes place;
- the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place; and
- the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.

### Right of Appeal

38 All decisions of the licensing authority will be subject to a right

of appeal in the Magistrate's Court. The court has the power to:

- dismiss the appeal;
- substitute for the decision any other decision that could have been made by the licensing authority; or
- remit the case to the licensing authority to deal with it in accordance with the court's direction; and
- make such order for costs as it thinks fit.

39 Currently decisions of licensing justices are appealed to the Crown Court and public entertainment licensing decisions of the local authority can be appealed to the Magistrates Court.

### Fees

40 The Act provides that application fees for premises and personal licences and for club premises certificates and temporary event notices will be fixed centrally by government regulations. There will be no discretion for licensing authorities to vary these fees. Although the government has consulted local authorities and the licensing trade on the appropriate level of fees, concerns have been raised that centrally set fees may not cover local authority costs which will mean that they are required to make up any shortfall from other funds.

41 **In addition, a system of centrally-set fees may adversely affect the Council because of the cost of enforcement in relation to a higher number of licensed premises than many smaller licensing authorities.**

### Offences

42 The Act specifies the following as criminal offences:

- carrying on or attempting to carry on a licensable activity on or from any premises otherwise than in accordance with an authorisation (i.e. a premises licence, club premises certificate or a temporary event notice);
- exposing for sale by retail any alcohol in circumstances where it is an unauthorised licensable activity;
- keeping alcohol which is intended for sale by retail or supply in circumstances where it would be an unauthorised licensable activity;

43 A person will have a defence to any of the above offences if his act was due to a mistake or to reliance on information given to him or the act or omission of another person or some other cause beyond his control and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

44 Other offences under the Act include:

- allowing disorderly conduct on licensed premises;
- selling alcohol to a person who is drunk;
- obtaining alcohol for a person who is drunk;
- failing to leave or entering or attempting to enter (having been requested not to) licensed premises when drunk and disorderly without reasonable excuse;
- keeping smuggled goods; and
- giving a false statement as part of the application for a licence, club premises certificate or temporary event notice.

45 The Act also introduces the offences relating to the supply of alcohol to children and the consumption of alcohol to children described in paragraph 35 above.

### Draft Guidance

46 The draft Guidance issued by the government:

- provides details of the principles to be adopted by the licensing authority in determining its licensing policy including:
  - ◆ a prohibition on adopting arbitrary quotas for the number of licensed premises although the cumulative impact of licensed premises in a particular area may be taken into account;
  - ◆ integration with local crime prevention, planning, transport, tourism and cultural strategies, including a proper separation of planning and licensing regimes to avoid duplication and inefficiency;
  - ◆ an emphasis on the importance of longer opening hours to combat binge drinking and anti-social behaviour;
  - ◆ discretion to demand stricter conditions for late licences operating in residential areas but no provision for generalised closing times in such areas (i.e. zoning) although the establishment of Alcohol Free Zones under the Criminal Justice and Police Act 2002 will not be affected;

- ◆ a recommendation against standard licensing conditions;

- ◆ promotion of the benefits of agreed enforcement protocols between the police and the local authority;

- ◆ proper account of the need to promote live music, dancing and theatre;

- provides a statement of best practice for the issue of licences;

- provides guidance as to the registration of personal licence holders as designated premises supervisors;

- underlines the need for fairness, proportionality and minimum bureaucracy in issuing licences through the delegation of the authority's licensing function to the licensing committee, sub-committees and licensing officers;

- provides a model sets of conditions to promote consistency (although licensing authorities may also attach their own conditions where they are necessary for the promotion of the licensing objectives;

- lays down additional guidance as to temporary events notices, club premises certificates and reviews of licences; appeals; police powers to close down licensed premises; sale and supply of alcohol to minors; and transitional matters.

### Transitional Provisions

47 Schedule 8 to the Act sets out arrangements for the transition of the existing licensing system to the new regime. An estimated

180,000 businesses throughout England and Wales will have their current licences preserved through "grandfather" rights. The timetable for the transition will be fixed by government regulations which have not yet been published although it is anticipated that the "first appointed day", when the licensing authority will be required to start processing applications, will be in March 2004, and the "second appointed day", when the new licences take effect, will be in January 2005.

48 The Act provides that for six months following the "**first appointed day**", holders of existing licences relating to particular premises can apply for them to be converted into new premises licences. Applicants must give a copy of their application to the police. If no objection notice is received from the police the licensing authority must grant the licence on its existing conditions except that:

- the mandatory conditions described in paragraph 19 above must be incorporated;
- the condition contained in the Licensing Act 1964 (which will be repealed by the Act) which allowed up to two musicians to perform in a bar without any specific permission will no longer apply.

49 However, the police must give a notice of objection to the licensing authority and the applicant within 28 days if:

- an appeal is pending against a decision to revoke or reject an application for the renewal of the existing licence and the police are satisfied that converting the licence would undermine the crime prevention objective; or

- there has been a material change in circumstances since the existing licence was granted or renewed which means that converting it would undermine the crime prevention objective.

50 If the licensing authority receives a police objection notice it must hold a hearing unless it agrees with the police and the applicant that a hearing is unnecessary. It must reject the application if it considers it necessary for the promotion of the crime prevention objective.

51 If the licensing authority fails to determine the application within two months the licence will be automatically be granted.

52 The new licences will take effect on the "**second appointed day**". They will be of indefinite duration unless the application specified a time limit.

53 An applicant can apply simultaneously for a variation to the terms of his/her existing licence e.g. a variation of hours.

54 Holders of a current justice's licence may apply for a personal licence within the same transitional period. If the licensing authority is satisfied that the applicant holds a justice's licence and no objection from police is received within 28 days then the licensing authority must grant the licence.

55 If the police object to the licence on the grounds that the applicant has been convicted of a relevant offence and the licensing authority considers it necessary for the promotion of the crime prevention objective, it must not grant the licence.

56 If the licensing authority fails to determine the application within three months of receipt the licence will be automatically granted.

## Impact on Birmingham City Council

- 57 The Council is currently carrying out a full impact assessment of the implementation of the Licensing Act on its licensing function.
- 58 Areas of concern for the Council are:
- local authorities do not have the power to set their own fees (see further at paragraphs 40 and 41);
  - the length of the transitional period is not yet fixed and may not be long enough to allow the Council to properly establish the new regime before the date fixed for the new licences entering into force. In addition, the Council will be required to administer the existing regime for public entertainment licences and the transitional regime for the Act during the transitional period;
  - the new definition of "late night refreshment" means that late night takeaways which do not currently require a licence will have to apply for a licence under the Act. The number of these establishments in the Birmingham area is not certain and may lead to a significant increase in work for the Council's licensing officers;
  - the requirement for a temporary event notice to be given only 10 working days in advance of the proposed activity will create application processing difficulties for the Council.

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