

# LICENSING Countdown

Keeping you informed throughout the implementation of the Licensing Act 2003.

DECEMBER 2004

dcms

## Something to mull over...



**During the busy festive season, reflect on the ghosts of Christmas past, and look ahead to Christmases yet to come. Next year will see the biggest reform of our leisure industry for 40 years, and businesses and event organisers should already be thinking about how they can take advantage of the new licensing regime. To help, Countdown offers some thoughts on seasonal matters...**

### **Christmas eve opening**

If, on the first appointed day, you have a special hours certificate for your premises which is in force or you have an exemption order in respect of your premises which applies generally and is in force, your application to convert your existing justices' licence will cover the permissions in respect of the supply of alcohol by virtue of those authorisations. However, if your authorisation only related to specific dates you will need to consider whether simultaneously to apply for

longer hours to match your past practice on particular days by means of a variation when making your application to convert. So you need to think about the pattern you would like, for example on Christmas Eve, for each year to come.

### **New Years eve opening**

When converting a current justices' on-licence to a new premises licence under 'grandfather rights' during transition you will automatically get the extended opening hours for New Year's Eve, following the making of the Regulatory Reform (Special Occasion Licensing) Order 2002. This extends your 'permitted hours' to include a continuous 36 hour period between 11am on New Year's Eve and 11pm on New Year's Day each year.

### **Festive entertainment**

If your Christmas or New Year's party relies on an 'occasional permission' or 'occasional licence' these permissions will

not automatically transfer to the new licence and you need to think about whether you can hold the same party under the authorisation of a temporary event notice, with its associated limitations, or whether you need to cater for it in a new premises licence.

Also think about the type of entertainment you put on over the festive season. The disapplication under current law of the need for a public entertainment licence in certain situations, such as the 'two in a bar' rule, will not be carried forward under the new regime. Premises that do not currently hold public entertainment licences will need to vary their premises licence if they wish to continue providing such performances next Christmas.

### **Carol singing**

Carol singers going from door to door, or just deciding to sing in a particular place, or even turning up unannounced in a pub and singing, would not require a licence, just as drinkers in a public house who suddenly start singing carols would not be licensable. However, if a business in a shopping mall, for example, arranges for a group of singers to sing carols this will be the same as their arranging any performance of live music and a premises licence or temporary event notice would be required.

### **Raffles and Tombolas**

Under current law, a bottle of wine that is offered as a tombola prize at a Christmas fete is considered to be a sale and requires a licence. Although, at the request of the Home Secretary, this law is usually not enforced, section 175 of the Licensing Act 2003 removes this anomaly where certain conditions are fulfilled.

**The DCMS Licensing Team would like to take this opportunity to wish Countdown readers a very happy Christmas and a successful New Year.**



## Each Licensing Countdown will feature 'Frequently asked Questions' In this issue we discuss transitional matters and issues relating to fees

**Q.** *What can I convert under 'grandfather rights'?*

**A.** Schedule 8 to the 2003 Act lists all 'existing licences' and certificates that can be converted during transition. However, this provision only applies to those existing licences and certificates that have effect on 7th February 2005. Any licences under the "old" system or variations to existing licences granted after 7th February cannot be converted.

**Q.** *What happens if I don't have my application form ready on 7th Feb?*

**A.** Don't panic. Holders of all 'existing licences' can apply to convert their current licences at any time between 7th February – 6th August 2005. The same applies to registered clubs, who may apply to convert their registration certificates to club premises certificates. This gives a six month window to make your application.

**Q.** *If I add another person to my justices' licence after 7th February, will they need to obtain the new personal licence qualification?*

**A.** The Act makes transitional provision for holders of justices' licences to apply for a personal licence without needing to possess a licensing qualification if they make their application between 7th February and 6th August 2005. So, if in that period the holder of a justices' licence changes or another holder is added

to a justices' licence, they can apply in that period only for a personal licence without needing the qualification.

**Q.** *Which non-domestic rateable value (NDRV) will apply when I convert my existing licences and certificates, as the rates will change in April 2005?*

**A.** We are proposing that the NDRV that applies at the time of your application will be the one on which the application fee will be based.

**Q.** *What will happen to my children's certificate when I convert to the new premises licence?*

**A.** Your children's certificate should accompany your application to convert your justices' licence, and it will automatically be converted. Following the second appointed day, the Act will see the abolition of children's certificates. However, if a children's certificate exists and you no longer wish its provisions to apply, you will need to apply to vary your licence at the same time as applying to convert.

**Q.** *Will my local authority be introducing a phasing strategy for applications?*

**A.** The Secretary of State recommends that licensing authorities, responsible authorities and representatives of existing licence holders and registration certificates should seek to work in partnership. This might include agreeing arrangements with many of the businesses affected for

staggering applications throughout the first six months of the transitional period to avoid gluts of applications. However, a licensing authority cannot insist that you apply at a certain time, and all applications to convert made between 7th February and 6th August 2005 must be processed.

One licensing authority adopting a phasing strategy is Westminster City Council. During the transition period, Westminster expects to process over 3,500 premises licence applications and over 4,000 personal licence applications. To ensure the process runs as smoothly as possible, Westminster intends to phase applications over the six months.

Licensees have been allocated to one of four phases and invited to submit their application during the relevant time period. Applicants will be able to attend specific area based road-show events that explain the processes involved and provide access to specialist officers who can support and advise them on their application.

**To find out more about Westminster's phasing strategy, visit:**  
[www.westminster.gov.uk/licensees](http://www.westminster.gov.uk/licensees)

**Further information about Transitional matters can be found in Schedule 8 of the Act and Chapter 13 of the Guidance.**

## PROPOSED TIMETABLE FOR IMPLEMENTATION

10th July 2003	15th Sept to 10th Nov 2004	4th Nov to 23rd Dec 2004	7th Jan 2005	7th Feb 2005	March 2005	6th Aug 2005	Nov 2005
The Licensing Act 2003 receives Royal Assent.	DCMS consultation on draft regulations (except for fees).	DCMS consultation on fees.	Start of 'three year period'. Licensing Authorities must have published their licensing policy statements by this date.	First appointed day. Licensing Authorities begin processing applications.	Consultation on draft regulations on permitted temporary activities.	Last date on which applicants/clubs can exercise their right to apply to convert existing licences to premises licences and club premises certificates.	Second appointed day. End of old licensing laws. New premises licences and club premises certificates given effect.

# Alcohol Harm Reduction Strategy

The Licensing Act 2003 is a key part of the Government's strategy for combating alcohol-related crime and disorder and anti-social behaviour. It will help to reduce the problems of disorder and disturbance associated with fixed universal closing times. However, it cannot alone deal with all of the problems which result from alcohol misuse. The Government's 'Alcohol Harm Reduction Strategy for England' aims to reduce the harms caused by alcohol misuse by focussing on key areas for intervention. The strategy, which was published earlier this year, outlines the Government's plans to work in partnership with health and police services, the drinks industry and communities in order to:

- tackle alcohol related disorder in town and city centres;
- improve treatment and support for people with alcohol problems;

- develop a voluntary social responsibility scheme with the alcohol industry; and
- provide better information to consumers about the dangers of alcohol misuse.

Since the Strategy was published in March, a number of its recommendations have been taken forward. The Home Office, Department of Health and DCMS are working closely with the industry to draw up a social responsibility code of practice. The drafting process will be very much industry owned. There is already a lot of good practice within the industry which needs to be brought together and replicated through a transparent and enforceable national code.

The Government will also be consulting with industry on the options for voluntary financial contributions towards

the harms associated with alcohol misuse recommended in the Strategy. The Government is keen to make the voluntary approach to industry social responsibility work. That said, the success of the voluntary approach will be evaluated early in the next parliament, and other measures will be considered if necessary.

The existing rules for alcohol advertising on television have also been significantly strengthened in many areas, particularly to protect under 18s, and are due to come into effect from 1 January 2005.

**The Alcohol Harm Reduction Strategy for England is available to download from the Prime Minister's Strategy Unit's website: [www.strategy.gov.uk](http://www.strategy.gov.uk)**

## Christmas Crackdown

Over Christmas and New Year licensees will see the second phase of the Association of Chief Police Officers and Home Office co-ordinated campaign with trading standards officers to tackle alcohol related crime and disorder. Following the success of the summer campaign, every police force in England and Wales is being invited to take part in the next phase, which runs from 15 December 2004 to 1 January 2005.

The summer crackdown demonstrated that co-ordinated and sustained enforcement activity delivers results. It sent a strong signal that the illegal sale and irresponsible consumption of alcohol would not be tolerated and gave a much clearer picture of the problems that surround alcohol related disorder and underage drinking. For example, trading standards officers' sting operations provided valuable data about how easy it is for under 18s to buy alcohol.

Partners are now determined to build on the good practice developed during the summer and the action that followed. The Home Secretary wrote to companies who were caught as repeat offenders through the test purchasing operations to ask them what they intend to do to address irresponsible and illegal selling of alcohol. Furthermore, the scope of fixed penalty notices was extended to cover the sale, purchase and consumption of alcohol to and by under 18s.

In addition, the Sentencing Guidelines Council has been asked to look at whether the full range of fines are being properly used against establishments prosecuted for selling alcohol illegally and whether 'being drunk' should be changed to an aggravating factor, rather than a mitigating factor, when sentencing for anti-social offences.



**For more information about the Alcohol Misuse Enforcement Campaign, visit: [www.policereform.gov.uk/psu](http://www.policereform.gov.uk/psu)**

# Bill sharpens up his Act



**The Kings Arms is a traditional pub, tucked away in one of the many side streets in Borough, near London Bridge. We went to visit its licensee, Bill Sharp, to talk about how he is preparing for reform.**

Trading in London's most ancient borough, Bill is extremely positive about the impending changes in what he described as 'archaic laws' that should have been done away with years ago. "It's something the public want and I think it's the greatest thing that's ever happened to the trade. It's going to give people the opportunity to maximise the potential of their businesses, under their own control".

Bill considers the debate about reform to have been largely dominated by negative publicity that doesn't reflect the reality for the majority of outlets. "Certain premises will get the opportunity to open late every night because of where they're based or customer demand, but that isn't going to happen everywhere. We aren't suddenly going to become an all singing, all dancing nation, 24 hours a day, and if people attempted to make that happen, there are safeguards in place to stop it, and so there should be".

Like many licensees, Bill is particularly positive about the flexibility of hours. "This is one of the best things about the Act. My customers have always wanted longer hours. We are a nation that does a lot to attract people to our pubs, and once they're in we throw them out again, because of the law, and that's how we're

perceived all over the world. But then I can't speak for everybody – some people might say that the benefits for live music are the best thing that's happened".

Bill is taking a very proactive approach to reform and intends to sound out his local community before applying to vary his licence next year. "The police work very closely with the licensees, and local residents are also very interested in what's going on. When I decide what variations I want, I will speak to the local residents to find out if they are likely to object. Perhaps I can allay their fears beforehand rather than have them object to my plans. I think licensees have a responsibility to talk to local people and this is something that we in the Guild (of Master Victuallers) are recommending everyone does. If the Act is seen in the spirit it was meant, residents are going to count for a lot."

Bill is still deliberating about what changes he would like to make, but offers advice to other licensees who are still considering their options. "Whether you're a freeholder, licensee or tenant, if you're tempted just to convert, you should first consider the value that will be added to your premises if you vary your licence. The flexibility in your business is going to count for a lot. Nobody will buy a business with limited facilities when they can go next door and have any number of permissions. It may not be something you'd take advantage of, but if the business or the premises would benefit from increased choice, then that has to be beneficial".

He also believes that offering hot food is important for those opening later. "If you're open until 1am you should offer something substantial later at night, rather than have people going home feeling queasy. I think everyone should consider this where the premises allow it."

But if Bill has just one piece of advice to pass on to fellow licensees, it would be "If you are in doubt, take proper advice. In the first instance, I suggest you go to your trade association".

## Bill on consultation:

"I've taken part in DCMS' consultation on regulations through the Guild of Master Victuallers, and also through the DCMS licensing advisory group, which I sit on. I will also take part in the consultation on fee levels. I commend Dartford's approach to consultation on their licensing policy statement. They invited licensees to a meeting to discuss the changes and this was received well by the trade."

## Bill on the draft forms:

"I'm fairly happy with the forms as they stand and time will tell when they're applied. I consider them to be relatively easy to fill out. It would seem that they're more involved than we originally thought, but the Government must have its reasons for requiring more information."

## Bill on plans:

"My leasing company have arranged for fresh plans to be drawn up for all their premises, so they don't have to rely on old plans. They've done this specifically for the new regime. This is a good service that they've provided, at no cost to me."

## Bill on personal licence qualifications:

"I think the concept of a personal licence is good. It means licensees will be recognised for their knowledge and skills and they will be able to move between premises with the benefit of those qualifications. It will also raise standards, and we've always wanted that. It's good for an individual's prestige too. I am considering sending one of my trained staff to get the personal licence qualification."

**Bill Sharp is licensee at The Kings Arms pub in Borough; member of the Guild of Master Victuallers, and member of the DCMS Advisory Group on Licensing.**



## Caborn's Column

Parliamentary colleagues have been writing to me about the concern of voluntary sport and recreation clubs that the new licensing fees will increase their running costs.

I do not believe the fees will be excessive and am confident that clubs can absorb the costs among their membership and

other users. Any reduction in licensing fees for sports clubs would see taxpayers or local authorities directly subsidising the drinks of football and rugby club players, which would be wrong. The Government provides support for clubs in other ways.

A recent amendment to the Local Government Bill will give mandatory rate relief at 80% for registered Community Amateur Sports Clubs, worth up to £10m per annum. In addition we have put £60m into the Community Club Development Programme to enhance facilities and increase local participation.

Another issue that continues to be raised is the problem of alcohol related disorder. I recognise that it is a small minority of licensed premises that behave irresponsibly and I've been encouraged that more breweries and bars have been scrapping irresponsible drinks promotions, adding new health warnings on bottles and offering free soft drinks for drivers.

It is in no one's interests to have repeated images of alcohol-induced violence and thuggery on our TV screens, which is too often the portrayal of our town and city centres. This is not good for tourism, puts licensees and their staff at risk and undermines all the good that this industry contributes to society. So, yes, we are being tough on alcohol related disorder and I make no apology for that.

One way Industry could help is by using the flexibilities of the new regime to offer a more diverse product and a better experience to the customer not based solely on drinking – be it live music, other entertainment, or late food. I very much hope licensees will think about this when considering their applications in the New Year.

In the meantime, I hope you have a safe and enjoyable Christmas.

# Minor issues



The protection of children from harm is one of the four licensing objectives and a key consideration when making licensing decisions. It is for licensing authorities to decide which body or bodies to recognise as "responsible authorities" to advise in their area.

In many licensing authority areas, it is expected that this will be the Area Child Protection Committee or the local Social Services department, or potentially in the future, the 'Local Safeguarding Children Board'.

As 'responsible authorities', these bodies will receive copies of all applications for the grant, variation and review of premises licences and club premises certificates and for a provisional statement, and will be able to make representations concerning the effect of the application on the protection of children from harm. Applicants will have to state in their operating schedule the steps they propose to take to promote 'the licensing objectives, including the protection of children from harm'.

Some premises and activities will be of higher risk than others and it is expected that the responsible authority will consider whether to make representations based on some form of risk assessment. The section 182 Guidance to licensing authorities gives some examples of relevant activities and a model pool of conditions.

The Association of Directors of Social Services (ADSS) and Local Authorities Coordinators of Regulatory Services (LACoRS) are disseminating practical advice about child protection duties under the Act through a guidance document, which can be downloaded from LACoRS' website, or ordered by calling:

**020 7840 7200.**

## Key organisations

- Local Authorities Coordinators of Regulatory Services: [www.lacors.gov.uk](http://www.lacors.gov.uk) Examples of good practice can be emailed to [\[katherine.smith@lacors.gov.uk\]](mailto:katherine.smith@lacors.gov.uk)
- The Association of Directors of Social Services: [www.adss.org.uk](http://www.adss.org.uk)
- The Department for Education and skills' website provides information about Area Child Protection Committees: [www.dfes.gov.uk/acpc](http://www.dfes.gov.uk/acpc)

# Court in the Act

Whilst the Act transfers alcohol licensing from licensing justices to licensing authorities, magistrates' courts continue to play a very important role.

During the transitional period, the 'old' and 'new' licensing systems will effectively run in parallel. As new premises licences and club premises certificates won't come into force until the second appointed day, existing licences and permissions granted by licensing justices and magistrates' courts will continue to have effect. In addition, magistrates will also be the court of appeal under the new system for parties aggrieved by decisions made by the new licensing authority. This applies in

the transition period even though authorisations will not yet have any force.

Following the second appointed day, magistrates will maintain their role as the court for appeals. In addition, magistrates will retain their existing authority, extended, to make closure orders in areas experiencing or likely to experience disorder or nuisance, and a new power to prohibit the sale of alcohol on trains will also take effect.

The Department for Constitutional Affairs (DCA) chairs a 'Licensing Transitional Working Group' to address aspects of the Licensing Act that affect both licensing authorities and magistrates' courts. Members of the group include the DCA, the

Magistrates Association (MA), the Justices Clerks Society (JCS), the Association of Justices Chief Executives and DCMS.

The Judicial Studies Board, with the assistance of the JCS and MA are also preparing a 'magistrates' training pack' about their role and new appeal powers. The pack recommends that a panel be established on the bench to deal with licensing appeals, in order to achieve consistency. In addition, the JCS are providing advice about applications for occasional licences, occasional permissions and special orders of exemption for dates falling after the 7th November 2005, until the second appointed day is known. Any appeals under the "old" licensing system will continue to be dealt with by the Crown Court.

Further information about appeals can be found in chapter 10 of the Guidance, and Section 181 and Schedule 5 of the Act.

## Village Halls

Action with Communities in Rural England (ACRE), is working to help ensure that England's 9000 village and community halls are able to sustain a broad range of cultural activities once the Licensing Act 2003 comes into force.

Most village halls are registered charities and play a vital role in our rich culture of live music, dancing and theatre. This was highlighted, for example, in the Government's recent live music survey which showed that 68% of halls have held live music in the last 12 months.

ACRE's village hall advisor, Deborah Clarke, says "Village halls are the life-blood of our rural communities. In recognition of this village, community, church halls and other similar buildings, will be exempt from the fee for premises licences that relates to the authorisation of the provision of regulated entertainment."

Village halls will also have the opportunity to apply for a premises licence authorising all licensable activities, including the sale of alcohol. This will

widen the range of events a hall can cater for without the need to obtain separate permissions. Halls will also have the option of using the light touch system of temporary event notices for relatively small-scale ad hoc events.

ACRE works closely with DCMS and LACoRS to ensure village halls obtain maximum benefit from the legislation. In addition to this, ACRE are working with the British Institute of Innkeeping and arranging for a number of hall management committee members to participate in a pilot course for the new personal licence.

ACRE will also be producing an Information Sheet for hall management committees once the legislation is in place, encouraging advisers to work with local licensing officers to make sure there is agreement on how the Act will work for them.

**The information sheet for hall management committees can be obtained direct from ACRE or from Village Hall Advisers at local Rural Community Councils.**



### Diary of events

#### 11 January

Association of Town Centre Managers Event 'Establishing a Base for BIDs' (Business Improvement Districts) at the Burlington Hotel, Birmingham [shaun.jones@atcm.org]

#### 17 – 18 January

Richard Caborn speaking at the Master Innholders Conference at the Dorchester Hotel [www.masterinnholders.co.uk]

#### End of January

Launch of the 'Live Music Kit'. Date and venue to be confirmed [www.musiciansunion.org.uk]

#### 31 January – 2 February

Delivering Sustainable Communities Summit at the GMEX / MCCC Manchester [www.civictrust.org.uk]

#### 12 – 13 April

Restaurant and Bar show 2005 at the GMEX in Manchester [www.restaurantandbar.co.uk]

**Next issue – January 2005. For more information about the Licensing Act 2003 and how it will affect you, visit our website at [www.culture.gov.uk](http://www.culture.gov.uk). If you have any comments or suggestions for articles email: [licensing.newsletter@culture.gsi.gov.uk](mailto:licensing.newsletter@culture.gsi.gov.uk)**

The contents of these pages are provided as an information guide only. They are not a full and authoritative statement of the law and do not constitute professional or legal advice. Any statements on these pages do not replace, extend, amend or alter in any way the statutory provisions of the Licensing Act 2003 or any subordinate legislation made under it or statutory guidance issued in relation to it. No responsibility is accepted by the Secretary of State for the Department for Culture, Media and Sport or the Department for Culture, Media and Sport for any errors, omissions or misleading statements on these pages, or any site to which these pages refer. In particular, it must be noted that, although the Department for Culture, Media and Sport has made every effort to ensure that the information in these pages is correct, changes in the law and the nature of implementation mean that the information in these pages cannot be guaranteed as accurate.