

LICENSING Countdown



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

SEPTEMBER 2004

DCMS publishes draft regulations

A further step towards the implementation of licensing reform has been made with the publication of draft regulations for public consultation.

The draft regulations are important as they provide the detail of how the new licensing regime will operate, including forms, plans and operating schedules. Without them, licensing authorities will not be able to begin processing applications on 7th February 2005. The consultation covers drafts on personal licences, hearings, premises licences, club premises certificates, transitional arrangements and licensing registers and gives you the opportunity to comment. Responses to the public

consultation will be considered when finalising the regulations later in the year. A separate consultation on fees is expected soon.

Who should respond? Anyone can comment on the draft. The operation of the regulations will impact on virtually everyone living in England and Wales, so it is important that we receive the views of all interested parties to ensure that the regulations are robust and effective. We especially want to hear from licensing authorities, chief officers of police, industry, members clubs, community and voluntary groups, performers and their representatives, residents associations, consumers and individuals.



How? A full copy of the consultation and draft regulations, together with the Regulatory Impact Assessment is available on the DCMS website at: www.culture.gov.uk/alcohol_and_entertainment. Responses can be e-mailed to regsconsultation@culture.gsi.gov.uk or sent to: The Alcohol and Entertainment Licensing Branch, Tourism Division, 3rd Floor, DCMS, 2-4 Cockspur Street, London SW1Y 5DH.

The consultation closes on 10th November.



Live Music Forum

Chaired by former pop artist Feargal Sharkey, the Forum brings together members of the music industry, Arts Council England, local authorities, small venue operators and Government to look at the current and future live music scene in the context of the Licensing Act 2003. The Forum's aims are to:

- Encourage take up of reforms in the Licensing Act 2003 relating to the performance of live music.
- Promote the performance of live music generally
- Monitor and evaluate the impact of the Licensing Act 2003 on the performance of Live Music

Live music benefits from the new Act

The way live music is licensed has been radically overhauled by the 2003 Act with the aim of encouraging more venues to put on live performances. When the Act comes into effect, the separate public entertainment licence will disappear and only a single authorisation will be needed to supply alcohol and put on regulated entertainment. The fee for a premises licence will be set centrally and will be the same whether an applicant applies to supply alcohol, provide live music, or both.

The Act will also end the outdated 'two in a bar' rule, which currently puts bands at a disadvantage by discouraging premises from putting on more than two entertainers all night.

Premises that already hold separate alcohol and entertainment licences can apply for these to be

converted into a single licence from 7th February 2005. At the same time premises which do not currently have an entertainment licence (including those who rely on the 'two in a bar' rule), will be able to apply for a variation to stage live music alongside their application to convert their alcohol licence.

The Government recognises the need to ensure that performers, their managers and agents, promoters and venue operators are aware of the opportunities provided by the new Act, and have established the Live Music Forum to ensure the new system delivers real benefits for grass root musicians. Forum Chairman, Feargal Sharkey said:

"I want to see more live music in this country, and with a major overhaul of licensing laws just around the corner, we have the best opportunity in a generation to achieve this."

"A third of licensees who do not currently put on live music said they probably would in the future. I want them, and anyone with the space to put on a band or a live act, to think carefully and remember the benefits in profits, to customers and to the next budding John Lennon who needs a stage to perform on."

MORI survey

The first ever survey on the state of live music in England and Wales was recently commissioned by DCMS to help inform the work of the Live Music Forum. Results from the survey will create a benchmark of activity against which the impact of the Licensing Act 2003

can be measured. MORI canvassed almost 1,600 pubs, restaurants and cafes, student unions, small clubs, members' clubs and church and community halls. Almost half had staged at least one live music event in the last 12 months. Customer demand and increased sales were identified as important factors in licensees' decisions to stage events.

The survey also shows there are many potential venues that have not thought about staging live music. The Forum will help show venues that the licensing reforms will make this easier, helping them to embrace the new law when it comes into effect. For more information on the survey results visit the DCMS website: www.culture.gov.uk



Caborn's Column

In a regular column, Licensing Minister Richard Caborn will address some of the main concerns that have been raised with him about the Licensing Act 2003.

A common theme in the letters that have crossed my desk in recent months have been concerns of golfers, and their Members of Parliament, about the possible affect of the new licensing laws on golf clubs. Their main concern is that when the new laws come into force late next year, they will stop visiting players, holidaymakers and casual golfers from having a drink after a round if they are not members, or accompanying a member of the club.

As a keen golfer myself, I have been happy to reassure golfers that there is nothing in the new licensing laws that is likely, in practice, to significantly change the way in which golf clubs operate in this respect. The Licensing Act 2003 gives clubs the flexibility to invite a broad range of people into their premises as 'guests'. A visitor can be served in the clubhouse bar as long as they are a 'guest', as defined in the club's own rules.

It is up to the club to consider whether its rules should require 'guests' to be physically signed in by a Member or whether some other requirement, such as the payment of a green fee, could apply. The only restriction is that the club must be run in 'good faith' as a genuine members' club (as is the case under current law) and must not become, in effect, a bar open to the general public. In other words, clubs already operating in, and intending to operate in 'good faith' should therefore have no reason to fear the future. The same is true of other 'qualifying clubs', including many social, sporting, political and ex-services clubs.

Another concern surrounding the new laws is that, as unaccompanied children under 16 will no longer be permitted in premises which are being used exclusively or primarily for the supply of alcohol, junior members will be barred from the clubhouse. From my experience, clubhouses are used for a great variety of purposes, so I don't envisage that this will be a problem. There is no way that we want to stop children being a part of golf clubs, learning about and enjoying the game in a safe, welcoming environment.

For more information about how the Act will affect registered members clubs, visit: www.culture.gov.uk/alcohol_and_entertainment/licensing_act_2003/qualifying_clubs



Each Licensing Countdown will feature 'Frequently asked Questions' In this issue we discuss licensing authorities' statements of licensing policy

Q. What is a statement of licensing policy?

A. A statement of how the licensing authority intends to exercise its licensing functions. It can state the authority's general approach to licensing decisions and provide transparency for all those involved in the licensing regime, including interested parties (such as residents) and applicants.

Q. What is the difference between a licensing authority and a local authority?

A. A licensing authority carries out licensing functions under the Licensing Act 2003. It does not carry out functions such as environmental health or planning. The carrying out of those functions is by a different authority under different legislation and it is important to make a distinction between the two authorities and their functions, although they may be made up of the same people in a local council. For example, it would be inappropriate for the licensing authority to promote local authority policies in relation to environmental health or planning in its licensing policy statement, as this would not be a licensing function of the licensing authority and it is the licensing authority not the local authority that formulates and publishes the licensing policy statement.

Q. But doesn't the Guidance say that licensing policy statements should indicate how licensing policy will be integrated with other policies such as planning?

A. Yes, it recommends proper integration of policies, however, care should be taken to be clear about the different roles and to not imply that the local authority's policies in other areas will override the requirements of the 2003 Act.

Q. Can policy statements set out standard conditions – e.g. restrictions in residential areas?

A. A statement of licensing policy **must not** undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits. If no relevant representations are made by either responsible authorities (e.g. the police, the fire authority), or interested parties (e.g. local residents) the licensing authority **must** grant the application, subject only to conditions that are consistent with the operating schedule or club operating schedule. Statements of policy should make clear that a key concept of the 2003 Act is to avoid the imposition of disproportionate and overly burdensome conditions where there is no need for such

conditions. Standardised conditions should therefore be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions from which necessary and proportionate conditions **may** be drawn in particular circumstances.

Q. Can a policy statement rule out granting more licences in areas where there is already a high concentration of pubs and bars?

A. The licensing authority can adopt a special policy for a particular area, which it should include in its statement if, after following the steps set out in the 2003 Act, and having regard to the Guidance to licensing authorities, it is satisfied that it is appropriate and necessary to do so because 'cumulative impact' would affect the licensing objectives. This would create a rebuttable presumption that applications for new premises licences or material variations would normally be refused, if relevant representations to that effect are received, unless it can be shown that the operation of the premises involved will not add to the cumulative impact already being experienced.

Applications must still be considered on their individual merits, but applicants would need to address the special policy issues in their operating schedules to demonstrate how they would not add to the cumulative effect already being experienced. A special policy relating to cumulative effect cannot justify, and should not include, provision for a terminal hour in a particular area. The effect would be to impose a fixed closing time akin to that under the Licensing Act 1964, which the 2003 Act abolishes.

Q. How should statements deal with requirements from other legislation such as health and safety or fire?

A. Licensing policy statements should include a firm commitment to avoid duplication with other regulatory regimes, so far as possible. For example, health and safety at work and fire regulations will already place a range of general duties on employers and venue operators. Conditions should only be attached that are 'necessary' for the promotion of the licensing objectives. Requirements that are already provided for in other legislation cannot be said to be necessary in the context of licensing law.

Licensing authorities are currently consulting groups such as the police, local businesses and local residents, on their draft licensing policy statements. To find out how you can have your say, visit your local authority's website, or contact their licensing officer.

Further information on licensing policy statements can be found in chapter 3 of the Guidance, which is available on the DCMS website.

Proposed timetable for implementation

10th July 2003	7th July 2004	15th Sept 2004	October 2004	10th Nov 2004	7th Jan 2005	7th Feb 2005	March 2005	Nov 2005
The Licensing Act 2003 receives Royal Assent.	DCMS issues Guidance under section 182 of the Act. Licensing Authorities begin preparing and consulting on policy statements.	DCMS begins consultation on draft regulations (except for fees).	DCMS begins consultation on draft regulations for fees.	Consultation on draft regulations (except for fees) ends.	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.	Second appointed day. End of old licensing laws. New premises licences and club premises certificates given effect.



Circus and street arts

Four organisations are working together to ensure that street arts and circuses are able to benefit from the new licensing regime.

Sir Christopher Frayling (Chair of Arts Council England), Ian McGarry (General Secretary of Equity), Verena Cornwall (Chair of the Circus Arts Forum), and Bill Gee (Independent Street Arts Network coordinator) recently wrote to local authority chief executives, council leaders and local authority arts officers about the importance of these art forms. Their letter highlighted the benefits of making direct reference to circus and street arts, along with live music, theatre and dance in licensing policy statements:

'We believe that including a direct reference in your policy will encourage circus and street arts performers to appear in your community, providing cultural opportunities for many people who do not otherwise engage with the professional arts. According to National Statistics, street arts, circus and carnivals were visited by 23% of the population in 2001. In

addition, visits from these art forms encouraged increased spend within an area thereby impacting favourably on local economies.'

They also echoed the Secretary of State's request that local authority chief executives give serious consideration to seeking premises licences in their authority's name for land or buildings under public ownership. This could include village greens, market squares, promenades, community halls or local authority owned arts centres. Performers would not then need to obtain an authorisation in order to perform at these places, although permission from the local authority would still be required.

This approach would benefit events such as festivals, circuses and street performances that are not geographically fixed. As well as providing a tremendous cultural and economic impact on a community, cultural provision also helps divert young people from anti-social activities and develop a leisure economy not solely based around alcohol.



The four organisations are planning to issue advice to street arts promoters, practitioners and circus proprietors/artists on how to work within the new regime and are working with the Local Authority Coordinators of Regulatory Services (LACORS) to provide advice to local authorities on working with applicants from these sectors.

For more information email:
David.Micklem@artscouncil.org.uk



Kent's commitment to the arts

Local Authorities are currently preparing and consulting on their licensing policy statements, in time for publication by 7th January 2005. The Guidance, issued by the Secretary of State, emphasises that licensing policy statements should say how an authority's licensing policy will be integrated with policies in other areas, such as crime prevention, environment, trading standards, culture and the arts, economic regeneration and tourism.

An example of what this might mean in practice is the approach taken by Kent's licensing authorities in developing their statements of licensing policy. They have included cultural strategies within their policies, paying particular attention to the promotion of live music, street art and entertainment. Roger Vick is Head of Licensing at Canterbury City Council, a city with a large student population, as well as an advisor to the LGA and LACORS. He said:

'Kent has taken a proactive position to ensure the promotion and sustainability of live events. Most councils have limited venues of their own to promote such activities, and therefore attention has been made to encourage private venues to promote live music, and other similar cultural activities. Canterbury's draft policy states that the Council will ensure the active promotion of live music, dance and all other art forms covered by the new licensing laws throughout the district, both in public locations and private premises.'

Roger believes that the draft policy, which is fully supported by council members, demonstrates Canterbury's commitment to the licensing objectives and the arts:

'Within the draft licensing policy there is also an undertaking to license open public spaces to ensure that touring and occasional outdoor cultural activities will not be hampered. This applies equally to the centre of Canterbury where busking and other street arts will be further encouraged, promoted, and managed by the licensing process.'

Roger also acknowledges the importance of considering the needs of residents and the local community:

'Councils must, however, balance their activities to ensure that events do not cause nuisance to local neighbours, and this can normally be achieved by reasonable practice at premises. It is generally possible to "silence" buildings, and it is normally problems around dispersal of patrons that can cause local nuisance.'

Kent has also recognised the importance of sustaining community facilities in rural areas. This too is recognised in the Canterbury draft policy, which states that the Council is keen to maintain the provision of village halls, church halls, community centres and village shops and encourage the provision of additional similar facilities.

We would be interested to hear from other licensing authorities about how they are integrating licensing and other policies. For more information on Kent and Canterbury's approach, contact Roger Vick [Roger.Vick@canterbury.gov.uk]



On board for licensing reform

For the first time, the alcohol and entertainment licensing regime is being extended to include boats and ships that are in motion on inland and coastal waters. Currently, only vessels which are permanently moored or berthed have to be licensed.

As many vessels have not been previously subject to such laws, operators are keen to know how the new regime will work in practice. Licensing authorities will also have to be aware of the particular requirements that are unique to the boat sector. For example, there are additional authorities responsible for vessels, which will have to be notified about applications for authorisations under the Licensing Act. These include the relevant navigation authorities, the Environment Agency, British Waterways Board and the Maritime and Coastguard Agency (MCA). The MCA is also authorised to carry out inspection and enforcement in relation to public safety on vessels.

The British Marine Federation, the Passenger Boat Association and the MCA recently met DCMS officials to discuss how best to inform the industry and licensing authorities about these implications. They are also working with Local Authority Coordinators of Regulatory Services on advice to licensing officers and plan, through the Domestic Passenger Ship Steering Group, to issue guidance to operators on how to work within the new law.

Key organisations include:

Association of Inland Navigation Authorities [www.aina.org.uk]

– set up in 1996 to give a single voice on waterways management issues. AINA is a good source of information about the various navigation authorities.

The Environment Agency [www.environment-agency.gov.uk]

– a public body responsible for protecting and improving the environment in England and Wales; with responsibility for the promotion of navigation, fishing and other recreation on our rivers.

British Waterways [www.britishwaterways.co.uk]

– a public corporation that manages and cares for about fifty per cent of all the inland navigations in Britain.

Maritime and Coastguard Agency [www.mcga.gov.uk]

– carries out some of its functions on behalf of the Secretary of State and inspectors or surveyors of ships appointed under section 256 of the Merchant Shipping Act 1995. It is responsible for implementing the Government's maritime safety policy throughout the UK. It is authorised to carry out inspection and enforcement in relation to public safety on vessels.

The British Marine Federation [www.britishmarine.co.uk]

– the trade association for the boating industry.

The Passenger Boat Association [www.passengerboats.co.uk]

– a trade organisation representing passenger boat companies from all over the UK.



Convenience stores engage in consultation

The DCMS Licensing Team attended an Association of Convenience Stores (ACS) Off Licence-Forum on the day after the Secretary of State issued the Guidance to licensing authorities. There are currently around 45,000 off-licences in England and Wales, 36,000 of which are held by small shops and stores. The forum included representatives from major convenience stores, including SPAR, Booker, Q8, the Co-op and Scottish Courage, showing how ACS members are determined to keep up to speed with the latest developments in off-licence law.

The relevant provisions within the Licensing Act 2003 were explained by DCMS, emphasising that the Government relies on working with industry groups like ACS to help communicate the new laws to the 180,000 licence holders in England and Wales.

In response to concerns about local interpretation of the new Act, DCMS advised that the Guidance issued to licensing authorities should help ensure a consistent and proportionate approach to licensing. Where necessary it also provides appropriate flexibility to reflect local circumstances. A key element of local flexibility is the requirement for licensing authorities to publish policy statements that set out how they intend to exercise their functions. Before determining their policy, the licensing authority must consult representatives of local businesses. DCMS urged convenience stores groups to engage in that consultation.

ACS Chief Executive, David Rae said: "ACS considers this issue to be one of our top priorities. Ensuring that we have a workable, flexible and modern licensing regime will benefit all our members. Local Authorities are setting the policies that affect local shops right now and we are encouraging our members to engage in those policy consultations."

For further information on ACS's work in your area contact: shane.brennan@acs.org.uk.



Summer enforcement campaign – update

The summer enforcement campaign to tackle alcohol related crime and disorder finished on the August bank holiday. Over the summer, police and trading standards officers visited more than 30,500 licensed premises, targeted over 1,800 premises in sting operations, issued over 5,000 troublemakers with fixed penalty notices and confiscated alcohol from more than 9,500 adults and juveniles.

The campaign showed that, while 96% of premises visited were not committing any offence, around half of those targeted in the sting operation were selling to under 18s. A key principle of the licensing reforms is to introduce strong powers to tackle the minority who act irresponsibly or illegally, while delivering more freedom for the responsible majority.

The new reforms include:

- The power to close down a premises with a premises licence or temporary event notice instantly where there is, or is likely to be disorder or public nuisance for up to 24 hours.
- Increases in the penalties for selling alcohol to children and making it possible to suspend or forfeit personal licences at first offence and not, as with justices' licences only on second conviction.
- The power to review premises licences and club premises certificates immediately when problems arise, instead of waiting for renewals.
- The power, on review, to modify conditions of the licence (i.e. changing trading hours), exclude certain licensable activities, remove the designated premises supervisor, suspend the licence for up to three months, or revoke it.

For more information on the summer crackdown, visit the Home Office website: www.homeoffice.gov.uk. For 'Violent Crime – Tackling Violent Crime in the Night Time Economy' Guidelines, visit: www.policereform.gov.uk/psu



Diary of events

2/3 November

Student Union Managers Event at the Holiday Inn, Birmingham [www.nusonline.co.uk]

4 November

Richard Caborn speaking at The Publican Conference at the Queen Elizabeth Conference Centre [www.thepublican.com]

16/17 November

Federation of Licensed Victuallers Associations AGM at the Hotel St Nicholas, Scarborough [www.flva.co.uk]

17 November

Richard Caborn speaking at the Responsible Drinks Retailing Awards Luncheon at the Carlton Towers Hotel. [www.responsible drinksretailing.co.uk]

23 November

Andrew McIntosh speaking at the Business in Sport and Leisure Annual Conference at the Royal Lancaster Hotel, Hyde park [www.bisl.org]

23 November

Civic Trust Conference: All Night Long – What's the future for England's Evening Economy, at Regent's College [www.civictrust.org.uk]



Tomorrow's Tourism Today

On 19th July, Culture Secretary Tessa Jowell spelt out how the Government will work with key partners to drive the tourism industry forward, when she launched **Tomorrow's Tourism Today**, the joint tourism prospectus of DCMS, the industry, the regions and local government.

The Licensing Act 2003 forms part of the Government's wider tourism reform programme and meets its strategy in a number of ways:

- It removes obstacles to the further development of the tourism, retail, hospitality and leisure industries.
- The new streamlined system introduces more proportionate regulation for businesses by slashing red tape, saving industry an estimated £2 billion over 10 years.
- Relaxed trading hours will provide greater choice for consumers, including tourists, with regards to where, when and how they spend their leisure time, allowing England and Wales' night time economies to rival their European counterparts.
- Act as a crucial mechanism for the regeneration of areas that need the increased investment and employment opportunities that a thriving night-time economy can bring.
- Offer further development within communities in rural and urban areas, of our rich culture of live music, dancing and theatre.

Tomorrow's Tourism Today can be downloaded from the DCMS website: www.culture.gov.uk/tourism

Next Issue – October 2004. For more information about the Licensing Act 2003 and how it will affect you, visit our website at www.culture.gov.uk. If you have any comments or suggestions for articles email: licensing.newsletter@culture.gsi.gov.uk. To subscribe to receive future issues of Licensing Countdown via e-mail, visit www.culture.gov.uk/alcohol_and_entertainment/licensing_newsletter

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