

10

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A M Ramiz



Licensing Guidance Review Team
Tourism Division
6th Floor
Department of Culture, Media and Sport
2-4, Cockspur Street
London
SW1Y 5DH

The Licensing Act 2003

Dear Sir,

An article published in the Morning Advertiser dated 16 March 2006 quoted the Peter Linacre the boss of the Massive Pub Company as saying "the new licensing regime could disintegrate into a bloody nightmare unless clear guidelines are issued on the role of the Designated Premises Supervisor"

It is my understanding that the DCMS are now conducting a consultation on draft revised Guidance to be issued under section 182 of the Licensing Act 2003. Having consulted with my colleagues in Sussex we feel that our observations may be of use to you and whilst these comments are not official Sussex Police Policy they do reflect the views of the operational officers.

Role of the Designated Premises Supervisor:

The Licensing Act 2003 provides a number of Mandatory Conditions which must be complied with, namely;

- a) The Act requires that where a Premises Licence authorises the sale of alcohol, the licence must include the following conditions:
 - No supply of alcohol may be made under the Premises Licence
 - At a time when there is no Designated Premises Supervisor in respect of the Premises Licence, or
 - At a time when the Designated Premises Supervisor does not hold a Personal Licence, or his licence is suspended.
 - Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a Personal Licence.
 - It is important to note that
 - The Designated Premises Supervisor does not have to be on the premises at all times but simply that there must be an appointed DPS for the premises who is in possession of a valid Personal Licence
 - A Personal Licence Holder does not have to be on the premises at all times as, if staff are trained and have been authorised by a Personal Licence holder to supply alcohol, this authorisation would be valid whether a Personal Licence holder is on the premises or not.

Failure to comply with either of the above Mandatory Conditions would make each sale of alcohol an unauthorised licensable activity.

A number of Companies have started to name individuals as Designated Premises Supervisors for multiple premises. There is no requirement within the Act to notify the Licensing Authority of any persons employed on the premises so the Authority, the Police and any other interested parties have no idea who is left in day to day control of the premises, their background or experience. There is no requirement for that person to be qualified or hold a Personal Licence. It is possible that individuals who would be barred from obtaining a Personal Licence and would therefore not be accepted as Designated Premises Supervisor could be left to run licensed premises.

The stance of the Government is clear, in July 2005 the licensing minister James Purnell told Parliament "there was no requirement for a DPS or PLH to be on site when alcohol is sold".

There is a need for this situation to be remedied. This would require the Act to be amended but I strongly believe that in addition to a national database of licence holders there is a need to make it a requirement that a Designated Premises Supervisor can only be responsible for one premises and in the absence of the DPS only a Personal Licence Holder can be left in charge.

There are of course issues concerning the availability of BII Courses and the time taken to obtain a Personal Licence. Perhaps consideration could be given to Personal Licence Holders who are undergoing training to be issued with a Provisional Licence at minimal cost which would authorise them to sell alcohol.

There is also an issue when it comes to the grant and/or variation of a Designated Premises Supervisor.

Recently a Police Licensing Officer was concerned about a number of reports emanating from a particular licensed premises. A number of incidents had occurred in a very short period of time following the change of DPS. He initiated enquiries and discovered that the new DPS had made a false application to obtain employment as a Public House Manager. The person concerned does not hold a Personal Licence and is therefore barred from becoming a DPS. The information provided on the application by the parent company for the variation of the Premises Licence naming that individual as the DPS was therefore incorrect

Whilst offences have been committed the lack of a national database and the self certification makes it easy for this type of incident to occur. The Police and the Licensing Authority are hampered when making their own enquiries by a lack of relevant information to enable them to carry out the necessary checks, in particular the applicants date of birth.

In the case referred to above the parent company had accepted the applicants word that they had passed the BII and held a Personal Licence. A CRB form was attached, although I understand that no copies of a BII Certificate or Personal Licence were submitted with the application. It should be noted that there is no requirement under the provisions of the 2003 Act for that to be done and, as in this, it is a relatively simple procedure of self certification that is open to abuse.

This is an area that needs to be tightened up. The applicant should be required to provide the issuing authority, and the Police with proof that they have the relevant documentation. To rely on a self certification process is naïve, criminals often lie when trying to further their nefarious schemes.

Applications for a Personal Licence:

During the transitional period there was a requirement for applicants for a Personal Licence to provide the Police with a copy of their application and the Police were able to object, where grounds existed, to the licence.

That requirement no longer exists. Application is made to the relevant Licensing Authority, that is, to the Licensing Authority for the area in which the applicant ordinarily lives. The location of the premises where the Personal Licence Holder (PLH) intends or may work is completely irrelevant.

In the event that an applicant ordinarily resides outside of England and Wales, for example in France, they may apply to ANY licensing authority of their choice for a licence.

There is not even a requirement for them to apply for a Licence in the area in which they are employed.

There are examples of workers employed in the hotel and hospitality industry who live on the Continent are employed in hotels in one area but have personal licences issued in the area of the company headquarters often hundreds of miles away.

The application must be made on the appropriate form as prescribed in the regulations and the applicant needs to submit the completed form together with the following documents:

- The original certificate of an approved licensing qualification.
- Two photographs of the applicant,
- Either
 - A basic disclosure criminal conviction certificate issued under Part V of the Police Act 1997, or
 - The results of a subject access search under the Data Protection Act 1998 of the Police National Computer (PNC) by the National Identification Service.
- A declaration by the applicant in the prescribed form stating that
 - Either he has not been convicted of a relevant or foreign offence, or
 - That he has been convicted of a relevant or foreign offence, in which case the declaration must be accompanied by details of the nature of the offence, the date of conviction and details of any sentence imposed in respect of the offence.
- The prescribed fee.

The Act states that if all four criteria are met a Personal Licence MUST be granted.

If the applicant fails to meet any of the first three criteria, the Authority must reject the application.

If the applicant fails to meet the relevant or foreign offences criteria, the Licensing Authority must notify the Chief Officer of Police for its area. The Chief Officer of Police then has fourteen days to consider whether, having regard to the nature of the convictions, the grant of a personal licence would undermine the crime prevention objective.

What the above procedure does not take into consideration is the fact that not all persons that the Police might wish to object to on the grounds of unsuitability have criminal records. Also it is possible that a CRB check is not always accurate. There are examples where the CRB result failed to register the fact that the applicant had a caution for an assault and was wanted on warrant as an illegal immigrant. This fact was only picked up due to the local knowledge of one of the Licensing Officers.

If the Police were to receive the application at the same time as the Licensing Authority and the time for registering objections were extended then further enquiries including interviewing the applicant if necessary, could be undertaken regarding the suitability of that applicant

Following on from this is the problem of Personal Licence Holders failing to notify the Licensing Authority of anything which could affect their Licence:

- Changes in name and/or address must be notified to the relevant Licensing Authority, which is obliged to keep a record of all its Personal Licence Holders

- A Personal Licence Holder must notify the Court before which he is charged with a relevant offence no later than the first hearing, that he is a personal Licence Holder. Failure to do so is an offence subject to a fine not exceeding level 2 on the standard scale (£500).
- In circumstances where a Personal Licence Holder has not complied with his obligation to notify the court as outlined above, he must inform the local authority of any conviction for a relevant or foreign offence during both the application or renewal period and during the period of validity of the licence.

The relevant authority is the authority that granted the licence. It is a fact that a number of Personal Licence Holders have already changed address and failed to notify the issuing authority.

The lack of a national database is a major failing in that the infrastructure necessary to make this part of the Act effective is missing. It is estimated that as many as 5% of Personal Licence Holders have moved on from the issuing area and failed to notify the authority.

It is impossible to say how many have failed to notify the Courts or the Issuing Authority when subject of criminal proceedings which might render them unfit to hold a Personal Licence.

Renewal of a Personal Licence:

“Renewal of the personal licence every ten years provides an opportunity to ensure that the arrangements ensuring that all convictions for relevant and foreign offences have been properly notified to the relevant licensing authority have worked and nothing has been missed, and that all such convictions have been properly endorsed upon the licence. It also provides an opportunity to ensure that the photograph of the holder on the personal licence is updated to aid identification.”

Ten years is too long a period. Within that time an individual could have caused problems throughout the country and then just moved on. The fact that the Act states that the Issuing Authority is responsible for the renewal of the licence aids criminal elements rather than the enforcement agencies.

One view is that renewal should be every three years and that the renewal should rest with the Local Licensing Authority where the individual is, at the time of renewal, resident or in the case of individuals resident outside of England and Wales where they are then employed.

Where an individual has caused issues that have resulted in an application for revocation, or suspension, of a Personal Licence the matter should be dealt with in the area where the problem has occurred. This would ensure that the matter could be dealt with promptly at minimum cost to the tax payer.

If the Police object to the renewal of a Personal Licence the holder of that licence, quiet rightly, is entitled to ask for a hearing in front of a Licensing Sub Committee. That hearing is held in the area where the licence was issued this can cause problems. There could be a situation where an individual now resident and employed in Devon would have to travel to anywhere within England and Wales for a hearing. The Police would have to provide the evidence and would need to be represented at the hearing possibly requiring travelling long distances at great cost to the public purse.

There is a concern that the grounds for objecting to the renewal of a Personal Licence are very limited. An individual because of their behaviour as a Designated Premises Supervisor could find, following a review of a Premises Licence, that they are removed as the DPS but there is no procedure following such an action whereby the Police could ask a Licensing Authority to consider revocation of a Personal Licence. Such a procedure does not exist within the 2003 Act.

The obvious example are individuals who habitually associate with known criminals engaged in criminal activities and using licensed premises as a base for their illegal operations.

Relevant Offences:

Schedule 4, Licensing Act 2003

The area of Relevant Offences is in need of amendment, specifically:

- The Act specifies the following as relevant offences under the provisions of the Road Traffic Act 1988 –
 - (a) Section 3A (causing death by dangerous driving while under the influence of drink or drugs);
 - (b) Section 4 (driving etc. a vehicle when under the influence of drink or drugs);
 - (c) Section 5 (driving etc. a vehicle with alcohol above the prescribed limit).

No mention is made of an offence of failing to supply a specimen of breath. A not uncommon scenario is that a person is arrested on suspicion of having consumed alcohol in excess of the prescribed limit and not wishing to carry a conviction for driving with excess alcohol they opt to fail to provide a specimen for analysis (section 6 Road Traffic Act 1988).

It is therefore possible that an applicant could carry multiple convictions of failing to supply a specimen of breath for analysis and not be excluded from obtaining or holding a Personal Licence, and by definition, from becoming a Designated Premises Supervisor because they have not been convicted of a relevant offence.

Again this is an area of the Act that needs to be addressed.

- The Act specifies the following in respect of acts of violence –
 - (a) A sexual offence, within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000.
 - (b) A violent offence, within the meaning of section 161(3) of that Act

“Violent offence means an offence which leads, or intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).”

It is this definition which needs clarification, some authorities are interpreting this to mean serious assaults, GBH and above excluding offences of a minor nature including minor ABH and Common Assault.

Temporary Event Notices (TENs):

The Act allows the applicant up to ten working days prior to the event to notify the local authority and the Police but only allows the Police forty eight hours to lodge any objection. A very simple and effective improvement would be to extend the time allowed the Police to make objections by giving them two working days notice from the day the application was submitted. Unscrupulous individuals fearing a Police objection have already been known to submit their applications on a Friday evening or before a Bank Holiday.

The only grounds for an objection by the Police are non furtherance of the Crime and Disorder Objective. No consideration is given to the effects of a TEN on Public Nuisance and some authorities are expressing concern that the Police are not taking into consideration noise complaints. It may be worth considering extending the consultation process to include Environmental Health Departments with Local Authorities.

Closure of Non Licensed Premises:

One Licensing Office was faced with the situation of a Public House that was licensed under the 1964 Act. The "licensees" failed to apply for a Premises Licence and did not apply for Personal Licences.

In effect they continued to operate in defiance of the 2003 Act. The Local Licensing Authority were informed and the owners have been reported although, at the time of writing, the matter has still to go to court.

One weekend the premises were taken over by a rowdy group of individuals and the "licensees" hid in another part of the building and called the Police. Whilst the public order situation was handled the Police were faced with the situation of how to deal with these premises. For whatever reason the premises were not closed, and had they been so all the review procedures would not have applied as these premises are not licensed and therefore not subject to that part of the 2003 Act.

The question arose as to what lawful powers are provided by the 2003 Act to close unlicensed premises where there is no evidence, at the time, of any public nuisance or disorder.

It would appear that the 2003 Act does not cater for this exigency.

Having taken advice and considered all the alternatives it was decided that it would be possible for an officer to issue a Closure Order under the provisions of the Criminal Justice Act 2001. However, if those served the notice fail to comply with it, there is no penalty.

The only option available to the Police or the Licensing Authority is to seek a Closure Order from a Magistrates Court (section 20).

Only on obtaining a Closure Order can the Police or the Local Authority take action for a breach. There are however various strict requirements about who to serve the notice on and how to serve it.

This is a complicated bureaucratic process that needs to be simplified.

National database:

" the Licensing Authorities supported by the Government, are considering the development of a central database, which will, among other things, include details of all personal licence holders."

As previously mentioned the lack of such a data base is seriously compromising the effectiveness of the Act in respect of identifying and controlling undesirable, and criminal elements from exploiting the new legislation.

Without the ability to record and make readily available information relating to previous cautions and minor, non recordable convictions, allows applicants to make false applications with little fear that they will be found out.

If the Government are unable to progress a National Database in the very near future, then surely here is a business opportunity just waiting for some enterprising individual, company or force to pick up.

Beer Gardens.

These are not always part of the licensed premises. As there is no mention in the legislation of any rules concerning the consumption of intoxicants it would appear that, provided any sales are made in accordance with a premises Licence there is nothing to prevent people sitting up all night in a beer garden drinking alcohol purchased before the premises closed. The consumption of alcohol is not a licensable activity.

Consumption of intoxicants following Off Sales.

Under the 1964 Act there was a provision that barred Off Sales being consumed within a short distance of the premises. Door step consumption, this does not appear in the 2003 Act and it is this failure that is leading to increased on street drinking, particularly in the vicinity of Off Licences and small shops.

Other Issues:

There is some confusion concerning to what extent either the Police or the Licensing Authority should conduct enquiries to validate applications. Under the 1964 Act, Police Licensing Officers often conducted extensive enquiries into the background of applicants for a Justices' Licence including interviewing the applicants.

This was a procedure that had much to recommend it but which has now fallen into disuse. If an applicant tried to avoid the Police then they were required to appear in court and could be questioned or the matter could be adjourned to a later date for further enquiries.

I am aware of an individual with a long criminal history who did not bother to apply for a Personal Licence because he knew there would be an objection from the Police and there was a good chance that the application would be refused. That individual applied for and was granted the Premises Licence, a situation that could never have arisen under the 1964 Act. We have a known active criminal lawfully involved in the running of Licensed Premises.

That degree of flexibility has been lost under the new Act. As a result some of the issues reported above have arisen. Luckily some discrepancies have been identified thanks in no small part to the local knowledge of the local Licensing Officers. There is a real danger that such local knowledge will, in time, be lost. One to one contact has much to recommend it.

Conclusion:

The Licensing Act 2003 currently does not meet the needs of the industry, the public or the authorities charged with administering and policing the legislation.

Much was achieved in the lead up to the implementation of the Act in 2005. It is sad to reflect that many issues are still to be settled and in the months and years to come there will be legal challenges, not because of what the Act contains but what it lacks.

It is a sad reflection on the legislators that so much has been achieved, not because of the good legislation supported by clear guidance, but in spite of the obstacles put in the way of the practitioners by a piece of legislation that is held in so much contempt within the industry. You only need to read the trade press to see what I mean.

I was employed as a Police Officer for thirty one years before retiring in March 2004 and returning to the service as a member of support staff in January 2005. I am currently employed as a Licensing Officer in North Sussex, the views expressed above are from mine and my colleagues point of view, and not those of the Sussex Police.



A M Ramiz