

Grey Paper No. 9 - November 2004 - The Licensing Act 2003

A Guide through the forthcoming changes.

1. THE CURRENT REGIME

- 1.1. Our theatres at present are governed by various pieces of legislation requiring us to obtain licences for:
 - 1.1.1. Theatrical performance – Theatre Licence (from the Local Authority, annual renewal)
 - 1.1.2. Music, Singing & Dancing – Public Entertainment Licence (from the Local Authority, annual renewal)
 - 1.1.3. Film Exhibition – Cinema Licence (from the Local Authority, annual renewal)
 - 1.1.4. Sale/supply of alcohol – see below
- 1.2. The sale/supply of alcohol is authorised in one of three ways:
 - 1.2.1. Justices' Licence (with or without conditions): this is obtained from the Licensing Justices, is renewed triennially, and is held by an individual(s)
 - 1.2.2. Club Registration Certificate: this is obtained from the Magistrates, coming up for renewal generally every three years, is held by the Club not an individual, and restricts the sale of alcohol to members, guests, and anyone else permitted by the approved club rules
 - 1.2.3. Theatres Act: this is simple to obtain, merely by serving notice on the Clerk to the Licensing Justices, and is renewed annually; but Theatre Licences can vary from one authority to another and need to be carefully checked, but if no conditions are imposed, liquor can be sold to and consumed by any person over 18 on the premises for whatever reason at any time during permitted hours for the local area.

(A typical restriction/condition might be to limit sale/consumption to times when the theatre is open for performances and bona fide rehearsals)

2. THE LICENSING ACT 2003

- 2.1. The Act replaces a plethora of legislation and means that a single Licensing Authority will become responsible for the regulation of the sale of alcohol, public entertainment, cinemas, theatres, late night refreshment houses and night cafes. Most LTG Theatres will need to consider only the legislation as it relates to theatres and alcohol, with perhaps some cinema use.
- 2.2. The principal elements of the new act are:
 - 2.2.1. There will be ONE SINGLE LICENSING AUTHORITY, the Local Authority
 - 2.2.2. There will be ONE SINGLE LICENCE, a "Premises Licence" or "Club Premises Certificate"
 - 2.2.3. The licence will cover a wide range of licensable activities, namely –
- 2.3. Sale/supply of alcohol;
 - 2.3.1. Provision of "regulated entertainment" including performance of a play, exhibition of a film, performance/playing of live/recorded music (but not incidental music), performance of dance, providing 'entertainment facilities' & provision of 'late night refreshment'.
 - The present 'permitted hours' are to be abolished
 - Renewals are to be abolished (though 'review' will be possible at any time)
 - Only four factors, the **Licensing Objectives**, are to determine the issue of a licence, namely –
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance

- Protection of children from harm

- 2.4. Operating schedules will be used principally to demonstrate how the operator intends to carry out the licensable activities on the premises, the times when the activity will take place, other times when the premises will be open to the public, and the steps which will be taken to promote the licensing objectives (e.g. public safety or the prevention of public nuisance), to be translated into CONDITIONS on the licence.
- 2.5. There will be a presumption in favour of the grant of a licence unless “relevant representations” are received from a “responsible authority” (e.g. police or fire authority) or an “interested party” (e.g. a local resident or business), in which case the application will proceed to a committee hearing and determination.
- 2.6. Any conditions imposed must be
 - 2.6.1. necessary to promote the licensing objectives
 - 2.6.2. should not duplicate existing legislation
 - 2.6.3. should be proportionate (tailored to size, style, characteristics & activities)
 - 2.6.4. should not be imposed as standard
3. **“PERSONAL LICENCES”** will be needed for those selling or authorising the sale of alcohol. The qualifications will be:
 - 3.1.1. over 18 years of age
 - 3.1.2. photograph x 2
 - 3.1.3. accredited qualification *
 - 3.1.4. CRB check *
 - 3.1.5. Renewable every 10 years
- 3.2. Every sale of alcohol must be made or authorised by a “Personal Licence Holder”
- 3.3. Where a “Premises Licence” authorises the sale of alcohol, a “Designated Premises Supervisor” (DPS) must be endorsed on it and that DPS must hold a Personal Licence.
* Not required on “conversion”
- 3.4. The Licensing Authority may attach relevant conditions to a licence, and the July 2004 Guidance makes it clear that standardised conditions should not be used, but that conditions should be tailored to the individual style and characteristics of the premises. The concept of a risk assessment for the building is included in the guidelines. For theatres, the Guidance lays down matters which should be taken into consideration when considering safety, including a schedule of the number of attendants etc.
- 3.5. While most of a theatre’s activities would be regarded as regulated entertainment, teaching students (i.e. workshops) are not, nor are rehearsals to which the public are not admitted. ‘Public’ dress rehearsals or any rehearsals when a fee is charged directly or by taking a ‘voluntary’ collection would appear to be licensable.

4. **THE TIMETABLE**

- 4.1. July 2004: GUIDANCE issued by the Secretary of State to achieve consistency between Local Authorities.
- 4.2. September 2004: Draft Regulations (secondary legislation), Application Forms, hearings procedures, fees etc., all subject to 8 weeks of consultation, so the final forms are not expected until the end of November 2004.
- 4.3. July 2004 to February 2005: Licensing Authorities to produce draft local policies prior to adoption, to be complete by 7th February 2005. These local policies are reviewable every three years.

- 4.4. 7th February 2005: the FIRST APPOINTED DAY. From this day, holders of existing licences have 6 months (i.e. to 6th August 2005) to apply for conversion to new Premises Licences. Holders of Justices Licences can also convert to new Personal Licences.

NB. The new Premises Licences and new Personal Licences will have no effect until THE SECOND APPOINTED DAY, not yet fixed but expected to be in November 2005. On this date, all licences under the existing regime will no longer have any effect, and any licensable activity must be authorised by a Premises Licence.

Very important: if any existing licence, eg. a theatre licence, falls to be renewed before the Second Appointed Day it MUST be renewed under the existing regime, *even after a new style licence has been granted.*

5. CONVERSION

- 5.1. Applications to convert must be made within 6 months of the First Appointed Day (i.e. between 7.2.05 and 6.8.05)
- 5.2. Only licences existing (i.e. current) as at 7.2.05 may be converted
- 5.3. Grandfather Rights will be preserved; i.e. what you now have you will hold subject to existing conditions and/or restrictions (but there will be an opportunity to “vary” ie. improve on existing licences – see E) below)
- 5.4. Application is to be made to the Licensing Authority, with a copy to the Police, and only the Police can object to conversion, and then only on the crime prevention ground
- 5.5. The applicant for conversion could be:
- 5.5.1. An individual over 18
 - 5.5.2. A company
 - 5.5.3. A partnership
 - 5.5.4. An unincorporated association, i.e. a club
- 5.6. The applicant must be the holder of the current licence, or any other person with the licence holder’s consent
- 5.7. Requirements for application will include a completed Application Form specifying:
- 5.7.1. A general description of the premises
 - 5.7.2. The existing “licensing activities” authorised by the existing licence, e.g. performance of plays and sale of alcohol
 - 5.7.3. Details of the proposed Designated Premises Supervisor
 - 5.7.4. Details of any hours restrictions on any existing licences
 - 5.7.5. Details of any conditions to which existing licences are subject
 - 5.7.6. The existing licences or certified copies
 - 5.7.7. A plan in specified form
 - 5.7.8. A consent form completed by the proposed DPS
 - 5.7.9. The consent of the existing licence holder if he is not the applicant
 - 5.7.10. The specified fee.
- 5.8. The procedure will be to:
- 5.8.1. Lodge the application with documents and fee to the Licensing Authority
 - 5.8.2. Send copies of all documents to the Police within 48 hours
 - 5.8.3. The Police have 28 days in which to object (most unlikely)

- 5.8.4. If there is no Police objection, the Licensing Authority MUST grant the application
- 5.8.5. The application will be deemed granted if not determined within 2 months
- 5.8.6. The Licensing Authority will issue a Premises Licence subject to existing conditions with the Designated Premises Supervisor endorsed if alcohol is involved
- 5.8.7. This new Premises Licence will come into effect only on the second appointed day, ?November 2005

6. VARIATION

- 6.1. The Act allows an applicant for conversion at the same time to apply for a “variation”, essentially to improve on the existing licence, which could, for example, include:

- 6.1.1. The removal of onerous or unnecessary conditions
- 6.1.2. An extension of hours
- 6.1.3. Add licensable activities not covered by the current licence

To do this, over and above simple conversion, one should:

- 6.1.4. Complete part B of the application form
- 6.1.5. Pay the additional fee (?)
- 6.1.6. Prepare an Operating Schedule (covering risk assessment and steps to be taken to promote the four Licensing Objectives)
- 6.1.7. Serve on all “responsible authorities”, not just the Police
- 6.1.8. Display a site notice
- 6.1.9. ? Place a Newspaper advertisement

This procedure allows interested parties (i.e. local residents and businesses) to object.

NB. If any application to vary (made at the same time as an application to convert) is NOT determined within 2 months, it is deemed to have been refused, but there is a right of appeal to a Magistrates Court. *If such an appeal is successful, an application for costs should be pursued, based on the Licensing Authority's failure to deal with the matter in reasonable time.*

7. TEMPORARY EVENTS NOTICES

- 7.1. These are to cover one-off events not covered by the Premises Licence OR extensions to hours to either the premises or elsewhere. BUT

- 7.1.1. The event must involve no more than 499 people in attendance
- 7.1.2. No more than 12 TENs for the same premises in any one year
- 7.1.3. A Temporary Event may last up to 96 hours, and 24 hours must elapse between 2 events
- 7.1.4. The maximum aggregate of TENs cannot be more than 15 days for the same premises
- 7.1.5. A Personal Licence Holder can give 50 TENs per annum (anyone else only 5 pa)

- 7.2. The completed application form must be served on the Licensing Authority and the Police, giving at least 10 working days' notice.
- 7.3. Only the Police can oppose with a counter-notice, and then only on crime and disorder prevention ground.
- 7.4. The Licensing Authority cannot impose conditions or restrictions.
- 7.5. In essence, this new system relies on notice being given rather than permission being sought.

8. CONDITIONS

- 8.1. A new Premises Licence issued following conversion can only include conditions imposed on any existing licence, and the “mandatory conditions”. The mandatory conditions are:

8.1.1. Where the sale of alcohol is involved

- There must be a DPS endorsed on the Premises Licence, and he must hold a Personal Licence
- All sales must be made or authorised by a Personal Licence Holder.
 - For Film exhibitions, the admission of children must be restricted by the Film Classification Body recommendations
 - If a condition requires “security activity” (e.g. doormen after 8:30pm) the individuals must be S.I.A registered

8.2. Otherwise any conditions imposed must only be necessary, proportionate, not duplicating other legislation and not standard.

8.3. Following applications to vary or for a new licence

8.3.1. If there are no relevant representations, the Licensing Authority must grant, subject only to the mandatory conditions and those translated from the operating schedule

8.3.2. If representations are made, the Licensing Authority MAY impose additional conditions subject to general principles set out above

8.3.3. Pools of model conditions which an applicant MAY volunteer or the Licensing Authority may impose if relevant representations are made will be set out in Guidance and/or local policy. Examples might include the following points:.

- Annex F of the Guidance provides details of conditions which might be necessary in the light of a risk assessment in relation to numbers of attendants required to be on duty, the requirement for seating plans to be approved by the Licensing Authority, the prohibition of blocking gangways including sitting and standing patrons, the use of special effects, the secure fixing of seating and the use of safety curtains.
- So far as the protection of children is concerned the Guidance specifically mentions the Children (Performance) Regulations and states that Licensing Authorities should NOT seek to duplicate the requirements of those regulations. It is however suggested that, subject to a risk assessment, it might be necessary to impose additional conditions to ensure for instance that backstage facilities are large enough to accommodate safely the number of children involved in a performance; that all chaperones and production crew receive specific instruction on fire procedures prior to the arrival of the children; that care should be taken to ensure that any special effects in use do not trigger adverse reactions in any of the children; and that children are under adult supervision at all times including the transfer from stage to dressing rooms and vice versa. Specific procedures need to be in place to ensure that the children can be accounted for in case of emergency.

9. CLUB PREMISES CERTIFICATES

9.1. The regime is similar to Premises Licences

9.2. The new certificates will replace current Club Registration Certificates

9.3. The main benefit – No DPS or Personal Licence holders required

9.4. The downside – 48 hour rule for membership (i.e. two days between an application for membership and the grant of membership, or obtaining the privileges of membership); only authorises the sale of alcohol and provision of regulated entertainment (i.e. plays) to or for members and guests; and any member can seek a review of the new certificates.

9.5. Accordingly, a Club Premises Certificate is not appropriate or sufficient for Theatres involved in public performances and alcohol sales to audiences, and a Premises Licence will be required.

10. PREPARATION FOR FEBRUARY 2005

- 10.1. Collate all existing licences (justices' licence, theatre licence, PEL etc.)
- 10.2. Make sure that you renew any that require renewal before November 2005
- 10.3. Check the conditions on all existing licences
- 10.4. Prepare the "conversion" application in draft form
- 10.5. Decide who is to be the DPS for alcohol sales – there can only be one
- 10.6. Ensure that the DPS obtains a Personal Licence; he/she will need accredited qualification and CRB check unless he is entitled to a Personal Licence on conversion, i.e. currently holds a justices' licence
- 10.7. Decide whether or not anyone else should obtain a Personal Licence, to cover replacement
- 10.8. Be aware of the local licensing policy by obtaining a copy of the current draft
- 10.9. Prepare a plan of the premises, 1:100 unless otherwise agreed, showing boundary of the building, external and internal walls, location of exits/escape routes, where each licensable activity is to take place, where alcohol is to be consumed, which fixed structures including furniture will affect exits/escape routes, the stage, its location and height, the location of the kitchen.

NB. The regulations, setting out the plans requirements are still subject to consultation and final confirmation.

- 10.10. consider whether a contemporaneous application for "variation" might be appropriate, i.e. do you want more than you already have?
- 10.11. If you currently rely on a club registration certificate, re-consider whether you need a Premises Licence.

This comprehensive Guide was prepared in lecture slide form by **Hamish Lawson**, Partner with **Cobbetts**, Solicitors, Manchester, and a member of Stockport Garrick Theatre, and was presented at Bolton Little Theatre on Sunday 26th September 2004 on the occasion of the Northern Region AGM and Conference. The Guild is extremely grateful to him for his hard work, and his permission for the further dissemination of his notes to members of the Guild at large. The copyright of course remains with him.

*The notes have been further annotated by Michael Shipley, and by **Tom Williams**, who in August had prepared a draft Grey Paper based on the Guidance issued by the Secretary of State, but which the Guild delayed sending out until after Hamish Lawson's presentation.*

Legal Disclaimer

This Grey Paper, like many previously issued, is to be read as a Guideline to Best Practice, and the Guild and Hamish Lawson can accept no responsibility for any action taken upon its contents. All theatres are advised to take independent legal advice on any of the points raised here.