

JOELSON WILSON

JOELSON WILSON LLP LICENSING/GAMING TEAM

LICENSING LAW UPDATE: 28th FEBRUARY 2010



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LICENSING LAW UPDATE

LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010

Further to our update last month about the new mandatory conditions, please remember that the new conditions relating to promotions, direct dispense of alcohol and the obligation to provide free tap water come into force on 6 April. They will apply to all premises licences and not just to new Licences or Licences submitted for variation or review. The same is true for new conditions set to come into force on 1 October, which was also highlighted in our last update relating to age verification (on - and off - licences) and the availability of smaller measures (on - licences only).

GOVERNMENT SEEKS TO GRAB HEADLINES AND VOTES BY CURBING LATE NIGHT ALCOHOL SALES

On 4 February, Licensing Minister Gerry Sutcliffe announced that the Crime and Security Bill will also be used to usher in a new power for licensing authorities to impose blanket bans on late-night drinking in so-called "problem areas". In practice, the earliest that the new power would be available for use is likely to be early 2011 but the idea does have cross-party support, so the timetable will be unaffected by the outcome of the General Election. The new power was first announced by Gordon Brown in his speech to Conference in September 2009. It would mean that, where crime and disorder or public nuisance cannot be attributed to particular individual premises, councils will be able to ban the sale or supply of alcohol between the hours of 3am and 6am across an entire area. Any ban would apply to all premises licensed to sell alcohol in that area, including pubs, bars, clubs, supermarkets and convenience stores. A council will be able to impose a ban all week long, or on selected days of the week only. If this new measure becomes law and you might be affected it will be essential for your business to resist such imposition. We will be able to assist you in this regard.

GOVERNMENT ISSUES RESULTS OF CONSULTATION ON SEXUAL ENTERTAINMENT VENUES

On 10 February the Government issued the results of its consultation exercise on reclassifying lap dancing clubs as "sexual entertainment venues". The Government received 154 responses to the consultation. The changes are due to come in on 6 April 2010. If Local Authorities adopt the relevant provisions then lap dancing clubs will need to obtain a Sexual Establishment Licence in addition to their existing premise licence. Local authorities can decide upon the conditions that will be attached to licences and can also restrict the number of venues within a particular area. If a local authority adopts a quota, it may be that not all the applications that have been received within the first 6 months will actually be granted. It is therefore vital that existing lap dancing operators lodge their applications as soon as possible.

No "grandfather" rights will be given. Existing operators will have to apply for the new licence, and will be treated the same as new operators. The Government intends to issue guidance to local authorities upon how they should exercise their powers to avoid any breach of Human Rights. There will be a transitional period of 12 months.

Conditions on an existing premise licence which relate exclusively to lap dancing will,

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as from the 3rd appointed day (this is the date when the new licences will come into force at the end of the transitional period) be deemed to have been deleted from the premise licence. The conditions will still appear upon licences but will have no effect. The Government suggests that operators may want to make a "minor variation" application to remove these redundant conditions. From the 3rd appointed day the sexual entertainment at the premises will be regulated by the conditions upon the new Sexual Entertainment Licence. The conditions upon the Premises Licence will continue to regulate the other licensable activities.

A full copy of the Government response to the consultation can be found on the following link.

<http://www.homeoffice.gov.uk/documents/cons-2009-sev/index.html>

Contact us should you need advice in this area.

JUDGMENT ON PPL APPEAL

Judgment has been handed down by the High Court in the Appeal by Phonographic Performance Limited. The result is good news for the licensed trade. The Appeal was refused, which means that the Copyright Tribunal's decision ordering the repayment of approximately £20 million pounds' worth of fees paid by Licensees has been upheld. The order of the Tribunal required PPL to correspond with all current licensees within 2 months and all former licensees within a reasonably practicable amount of time. A claim form for repayment will be enclosed.

OFFENCE OF PERSISTENTLY SELLING ALCOHOL TO CHILDREN

Since the 29 January, you will commit the offence of persistently selling alcohol to under 18s if you make two underage sales in three months. Three underage sales in the same period were previously required in order for the offence to be made out.

CONSULTATION ON TOP UP TRAINING FOR DOOR SUPERVISORS

The closing date for this consultation is 23 March 2010. It invites comments and responses on the introduction of top up training for Door Supervisors. The consultation proposes additional training for all new applicants to be registered with the SIA, renewals of registration after May 2011 and for anyone who qualifies before June 2010. June 2010 is when the additional training would automatically be included in the existing training programme.

CAN I HOLD A RACE NIGHT, CASINO NIGHT OR POKER NIGHT?

Fancy holding a poker, casino or race night to raise money for charity? You will be pleased to know that you may not need a licence or permission to do so.

Provided the night is organised with a view to raising money for a good cause and meets certain criteria, a licence or permission may not be required. For example, you could hold a race night using an old recording of a horserace. Odds must not be provided for the runners and as such the event would be classified as a game of equal chance. Additionally participants must be told which charity will be benefiting from the night's proceeds and informed of the prize(s) they could win. The prizes must not be dependent upon the number of participants. The race will then

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determine the winner. The maximum amount a participant can be charged in relation to the event is £8 per day and the total amount paid in prizes must not exceed £600.

If you are interested in holding a poker, casino or race night for charity, please contact us for further information.

Need to know more? Ask us. “This value-for-money practice provides an excellent level of service”, “a steady firm that will deliver consistently high results”, “truly proactive practitioners”– Chambers & Partners Guide to the UK Legal Profession 2010. For information/advice on alcohol and entertainment licensing or gaming, betting, lotteries or remote gambling matters, please contact:

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