

JOELSON WILSON

JOELSON WILSON LLP LICENSING/GAMING TEAM

LICENSING LAW UPDATE: 31ST JANUARY 2010



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LICENSING LAW UPDATE

REVISED GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003 - JANUARY 2010

The revision to the Secretary of State's s.182 Guidance was laid before Parliament on the 28th January 2009. It comes into force immediately and has been revised to take account of the new provisions under section 33 of the Policing and Crime Act 2009, which commenced on 29th January 2010 and which enable councillors, in their capacity as elected members of the relevant licensing authority, to act as 'interested parties'.

CONSULTATION ON PROPOSAL TO CLARIFY THE DEFINITION OF 'ENTERTAINMENT FACILITIES' IN THE LICENSING ACT 2003

The DCMS is consulting on a proposal to exclude the provision of musical instruments from the definition of entertainment facilities in the Licensing Act 2003 and a proposal to clarify that entertainment facilities are not separately licensable if they are used solely for the provision of incidental music.

The proposal would encourage the use of the existing exemption for incidental music. Performances of live music would remain licensable if they:

- are for purposes that include the purpose of entertaining an audience and take place in the presence of an audience;
- do not benefit from the exemption for music that is incidental to other activities; and
- do not fall within any other exemption in Schedule 1 to the Act.

The proposal would also ensure that the provision of musical instruments (such as a piano made available to members of the public to entertain themselves) is excluded from the definition of regulated entertainment. For clarity, this exemption will extend to items provided to enable a musical instrument to be played without amplification. This is intended to clarify that ancillary items such as music stands are also excluded from the definition of entertainment facilities.

The closing date for responses is 26 February 2010 and should you wish to voice your opinion you should reply to licensingconsultation@culture.gsi.gov.uk

CONSULTATION ON A PROPOSAL TO EXEMPT SMALL LIVE MUSIC EVENTS FROM THE REQUIREMENTS OF THE LICENSING ACT 2003

The DCMS is also consulting on a proposal to exempt live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003.

The Government considers that small live music events for 100 people or fewer are unlikely give rise to concerns under the licensing objectives and propose to introduce a revocable exemption for small live music events for 100 people or fewer in licensed and unlicensed premises.

The closing date for responses is 26 March 2010 and once again you should reply to licensingconsultation@culture.gsi.gov.uk.

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WEIGHTS AND MEASURES (SPECIFIED QUANTITIES) (UNWRAPPED BREAD AND INTOXICATING LIQUOR) ORDER 2010

The National Measurement Office (an Executive Agency of the Department for Business Innovation & Skills) has produced guidance for businesses in relation to the Weights and Measures (Specified Quantities) (Unwrapped Bread and Intoxicating Liquor) Order, which will come into force on 6 April 2010.

The law on specified quantities for non-pre-packaged alcoholic drinks is changing. The Government has considered it appropriate to review these quantities to ensure that they remained appropriate and continued to protect consumers, without any unnecessary burdens on business. This was deemed particularly important given the changing pattern of alcohol consumption and changes to drinking habits that have occurred in recent years. The Government had also been made aware of interest from businesses seeking more flexibility in some areas such as small servings of wine and additional sizes for the sale of beer and cider.

Therefore from April 2010 there will be a new specified quantity of 2/3 pint for draught beer and cider to give licensed premises a greater choice of sizes and to satisfy a demand for a quantity between 1/2 pint and 1 pint and the existing specified quantities for fortified wines (when sold by the glass) will be reduced to the smaller sizes of 50ml and 70ml to bring the law into line with current trade practices.

How much consumers will benefit from these changes will ultimately depend upon the extent to which the retail licensed trade takes advantage of the freeing up of the market place and will be a matter for the commercial judgement of licensees.

LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 has been published

This sets out the five new mandatory conditions which will apply to relevant premises licences and club premises certificates. The first 3 measures will come into force on the 6 April 2010 and essentially require that;

1. The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. An "irresponsible promotion" is defined in the Order and we can advise further on promotions.
2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (so called "dentist's chair").
3. The responsible person shall ensure that free tap water is provided upon request to customers where it is reasonably available.

The remaining two measures will come into force on the 1 October 2010

4. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. The policy must require individuals who appear to the responsible person to be under 18 years of age to produce photographic ID before being served alcohol.

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5. The responsible person shall ensure that the following alcoholic drinks are available to customers in the following measures – beer or cider: ½ pint, gin, rum, vodka or whisky: 25ml or 35ml and still wine in a glass: 125ml.

These five paragraphs will apply only to relevant premises licences authorising consumption of alcohol on the premises, with the exception of paragraph 4, (requiring an age verification policy to be adopted), which will also apply to licences for the supply of alcohol for consumption away from the premises.

What happens if I breach these new Mandatory Conditions?

The new mandatory conditions will be treated in exactly the same way as the existing mandatory conditions, such as a designated premises supervisor having to be in place at all times or any other mandatory condition that applies to a premises licence. Therefore, if one of the new mandatory conditions is breached, the person carrying out the licensable activities risks a fine of up to £20,000 and/or (in extreme cases) six months' imprisonment.

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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