

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Miscellaneous and Supplementary

General

262. This Part of the Act covers a number of miscellaneous issues.

Section 172 – Relaxation of opening hours for special occasions

263. The Secretary of State may make an order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on special occasions – for example, Royal Jubilees.

Section 173 – Activities in certain locations not licensable

264. This section provides that activities which would otherwise be “licensable activities” for the purposes of the Act are not such activities if carried on in certain places (e.g. aboard a vessel on an international journey).

265. The “examination station” of a designated airport (as mentioned in subsection (1)) is essentially that part of the airport beyond the security check-in.

Section 174 – Certifying premises on grounds of national security

266. Ministers of Cabinet rank, or the Attorney General, may grant a certificate in respect of any premises on the grounds of national security. The effect of the certificate is that activities carried on at the premises are not “licensable activities” for the purposes of the Act (see section 173(1)(g)). This power may be used in circumstances where the inspection of a particular premises, for purposes of the licensing regime, would give rise to a security risk.

Section 175 – Exemption for raffle, tombola etc.

267. The giving of a sealed container of alcohol as a prize in a lottery will not be counted as a licensable activity for the purposes of the Act if:

- the lottery is promoted as incidental to a bazaar, sale of work, fete, dinner, dance, sporting or athletic events or other entertainment of a similar character
- after the deduction of all relevant expenses, none of the proceeds are used for private gain
- none of the prizes are money prizes
- the tickets or chances are sold or issued and the result of the draw is announced at the time of, and in the same place as, the entertainment
- the lottery or draw is not the main inducement to attend the entertainment

268. Subsection (3) defines the expenses which are ‘relevant’ for the purposes of this section as those incurred in the course of arranging and holding the entertainment, and those in connection with the lottery or draw, including the printing of tickets and buying prizes.

Section 176 – Prohibition of alcohol sales at service areas, garages etc.

269. This section provides for a general prohibition on the sale of alcohol at motorway service areas and garage forecourts. The Secretary of State may by order exclude or include any descriptions of premises from the set of those to which the prohibition applies. An example of the possible use of this power would be to lift the prohibition from garages, perhaps in rural areas, where the turnover is made up of a specified proportion of non-petrol sales. But the power is not limited to premises related to motorway service areas and garages.

Section 177 – Dancing and live music in certain small premises

270. This section provides that where
- a premises licence or club premises certificate authorises the sale of alcohol for consumption on the premises and the provision of “music entertainment” (live music or dancing),
 - the relevant premises are used primarily for the consumption of alcohol on the premises, and
 - the premises have a capacity limit of up to 200

any conditions relating to the provision of the music entertainment imposed on the licence by the licensing authority, other than those set out by the licence or certificate holder in his operating schedule, will be suspended except where they were imposed as being necessary for public safety or the prevention of crime and disorder.

271. In addition, where
- a premises licence or club premises certificate authorises the provision of music entertainment, and
 - the premises have a capacity limit of 200

then, during the hours of 8am and midnight, if the premises are being used for the provision of live unamplified music but no other description of regulated entertainment any conditions imposed on the licence by the licence authority, again other than those set out in the operating schedule, which relate to the provision of the music entertainment will be suspended.

272. This section can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate.

Section 178 – Right of freeholder etc to be notified of licensing matters

273. This section provides that a person with a property interest in any premises situated in the licensing authority’s area may give notice of his interest to that authority in a prescribed form and on payment of a fee to be prescribed by the Secretary of State. Those who may take advantage of this arrangement include the freeholder or leaseholder, a legal mortgagee in respect of the premises, a person in occupation of the premises or any other person prescribed by the Secretary of State. The notice will have effect for 12 months but a new notice can be given every year. Whilst their notice has effect, the person or business involved will, if any change relating to the premises concerned has been made to the licensing register which the licensing authority has a duty to keep under section 8, be notified of the matter to which the change relates.. They will also be notified of their right under section 8 to request a copy of the information contained in any entry in the register .

Section 179 – Rights of entry to investigate licensable activities

274. This section provides for police officers or other authorised persons to enter premises to ensure that any licensable activities are being carried on under the appropriate authorisations. It is already an offence under the Police Act 1996 to obstruct a constable in the exercise of his duty. It will be an offence under the Act to obstruct other authorised persons in exercising this power.

Section 180 - Right of entry to investigate offences

275. This section provides that police officers may enter and search premises where there is reason to believe an offence under the Act has been, is being or is about to be committed, and may use reasonable force to gain entry. It will be an offence intentionally to prevent the exercise of these powers.

Section 181 – Appeals against decisions of licensing authorities

276. Applicants for and holders of licences and club premises certificates, applicants for provisional notices and interim authority notices and applicants for temporary event notices, responsible authorities and interested parties all have rights of appeal to a magistrates' court against decisions of a licensing authority. The appeals mechanism is set out at Schedule 5. This section sets out the powers of the magistrates in determining such appeals.

Section 182- Guidance

277. The Act provides that licensing authorities must have regard to guidance issued by the Secretary of State in formulating their framework policy documents and in discharging their other functions under the Act. This section provides for the issue and revision of this guidance and its publication and requires the Secretary of State in the case of the initial guidance to issue it only after it has been approved in draft form by resolution of each House of Parliament. Revisions of the guidance come into force when laid before Parliament. However, they can be prayed against within 40 days and if disapproved a further revision would have to be laid under the same procedure. In the meantime the revised guidance retains full force and effect pending the laying of the further revision.

Section 183 - Hearings

278. Procedures for hearings will be prescribed in regulations, which may require authorities to notify certain persons of hearings, ensure the expedition of urgent cases and set out rules relating to evidence and legal representation and the period within which steps must be taken. Licensing authorities may not make any orders as to the costs of hearings under the Act.

Section 184 – Giving of notices, etc.

279. This section sets out rules for delivery of documents to the licensing authority and any other person or body affected by the licensing regime.

Section 185 – Provision of information

280. This section provides for the sharing of information by licensing authorities and responsible authorities for the purposes of the Act.

Section 186 - Proceedings for offences

281. This section sets out the bodies that can bring a prosecution for an offence contained in the Act. It also extends the limitation period for bringing summary proceedings from the usual period of six months to a period of 12 months.

Section 187 – Offences by bodies corporate etc.

282. This section provides that where an offence under the Act is committed with the consent or connivance of a director, member of the management committee, chief executive, manager, secretary or similar officer of a corporate body (e.g. a limited company), or through attributable neglect, the officer as well as the corporate body commits the offence. In the case of partnerships, the consent, connivance or attributable neglect of a partner, or in the case of other unincorporated associations the consent or connivance of an officer of the association or member of its governing body, would make the individual and the organisation guilty of the offence.

Section 188 – Jurisdiction and procedure in respect of offences

283. This section provides that any fine imposed following the conviction of an unincorporated association should be paid out of the association's funds. It provides that any proceedings brought against unincorporated associations must be brought in the name of the association, and not the name of any of its members. Certain legal procedures and rules relating to the service of documents will apply to unincorporated associations as to bodies corporate.

Section 189 - Vessels, vehicles and moveable structures

284. The provisions for premises licences, club certificates and temporary permissions will apply to a vessel not permanently moored or berthed in a particular place as though they were premises situated at the place where it is normally moored or berthed. A vehicle or moveable structure – e.g. tent or inflatable building – which is not permanently located in the same place will be treated as premises located at any place where it is parked or set. So if licensable activities are carried on or from the vehicle when it is parked, a premises licence, club premises certificate or temporary event notice will be required, and where such activities take place when it is parked in more than one place, the vehicle will be treated as if it were separate premises at each location, and separate premises licence etc. will be required. Sections 29 to 31 (provisional statements re premises licences) do not apply to vessels, vehicles or moveable structures.

Section 190 - Location of sales

285. Where the place where a sale of alcohol takes place is different from the place from which the alcohol is supplied, the sale is treated as having happened at the place from which the alcohol is appropriated to the contract. For example, when alcohol is bought via mail order or a telephone call centre, the sale will, for the purposes of the Act, have taken place at the warehouse from which the alcohol would be delivered, and not the call centre. The requirement for a premises licence will therefore apply to the warehouse rather than the call centre.

Section 191 – Meaning of “alcohol”

286. For the purpose of the Act, ‘alcohol’ means: spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor. It does **not** include any liquor of 0.5% strength or below at the time of the sale or supply in question, perfume, flavouring essence, alcohol which is, or is included in, any medicine, denatured alcohol (methylated spirits) or alcohol contained in liqueur confectionery (as defined in subsection (2)).

Section 192– Meaning of ‘sale by retail’

287. This section defines ‘sale by retail’, of alcohol, for the purposes of the Act as a sale to a person other than a sale to a trader for trade purposes, to a club which holds a club premises certificate, to a premises licence holder or to a premises user with a temporary event notice for purposes permitted by those certificates, licences or notices. The purpose of these exemptions is to ensure that purely “business to business” sales are excluded from the scope of the Act.

Section 195 – Crown application

288. This section provides for the Act to apply to the Crown and to Crown property. It also applies to land of the Duchies of Lancaster and Cornwall (except to the extent that they are occupied by the Queen or the Prince of Wales).
289. The Board of the Green Cloth is a committee of the Royal Household responsible for licensing inns "within the verge of the Palace" (i.e. Buckingham Palace). There are a number of public houses within the jurisdiction of the Board, which is limited to what used to be the private grounds of the Sovereign, and includes Carlton House Terrace, the northern end of Whitehall and the National Gallery (the former Royal Stables). Those areas currently within the jurisdiction of the Board of Green Cloth are within the remit of the Act, so that licensing functions in respect of these areas are to be carried out by the relevant licensing authority.
290. Activities carried out at royal palaces are not "licensable activities" for the purposes of the Act (see section 173). This would include, for example, the Palace of Westminster.

Section 196 – Removal of privileges and exemptions

291. Under the Licensing Act 1964, the historical exemptions and privileges enjoyed by the University of Cambridge and the Honourable Company of Vintners were preserved and so the licensing requirements did not apply to either of them. The new regime applies across the board and this section makes it clear that none of those privileges or exemptions are being preserved.

Section 197 - Regulations and orders

292. Most secondary legislation made under the Act is to be subject to the negative resolution procedure. But the following secondary legislation is to be subject to the affirmative procedure:
- a) an order under section 100(8) (alteration of maximum temporary event period etc.)
 - b) an order under section 107(12) (alteration on limit on number of temporary event notices)
 - c) an order under section 172 (relaxation of opening hours for special occasions);
 - d) an order under section 176(3) (order amending definition of "excluded premises" where alcohol sales are prohibited);
 - e) order under paragraph 4 of Schedule 1 (amendments to the meaning of "regulated entertainment").
293. Commencement orders and the order prescribing the start of the first period for which licensing authorities must prepare a statement of licensing policy (see section 5) will be subject to neither procedure. Regulations or an order under the Act may make transitional provisions.

Section 198 – Minor and consequential amendments

294. This section gives effect to Schedule 6, which sets out minor and consequential amendments to existing legislation required by the Act. The Secretary of State has a limited power to make consequential amendments by order. He may only make amendments, consequential on any provision of the Act, to any Act or subordinate legislation made before the provision in question comes into force.

Section 199 – Repeals

295. This section gives effect to Schedule 7, which sets out the existing legislation repealed by the Act, and the extent of any repeal.

*These notes refer to the Licensing Act 2003 (c.17)
which received Royal Assent on 10 July 2003*

Section 200 – Transitional provisions etc.

296. This section gives effect to Schedule 8, which sets out the transitional and transitory provisions.

Section 201 – Short title, commencement and extent

297. The Act extends to England and Wales. And the amendment of the Confiscation of Alcohol (Young Persons) Act 1997 (see section 155) extends also to Northern Ireland.