



LICENSING ACT 2003 – GUIDANCE FACT SHEET

OFF LICENCES AND GARAGES

Background to the Licensing Act 2003

Purpose of the Act

The overall aim is to modernise the legislation governing the sale and supply of alcohol and public entertainment licensing so that:

- Various existing pieces of legislation are brought under a single act.
- Licensing decisions are made according to *local* considerations.
- Licensing hours are deregulated (ie the current restrictions on the hours when alcohol can be sold are to be removed).

Licensing objectives – The Act lays out 4 licensing objectives:

- The prevention of crime and disorder
- The protection of children from harm
- Public safety
- The prevention of public nuisance

Types of licence relevant to off licences and garages

The Act introduces the following licences:

- **Premises licence** – This is a licence granted in relation to specific premises and will specify the nature of the licensable activity and any applicable conditions. Its duration is for the life of the business.
- **Personal licence** – This is a portable licence granted to an individual enabling him/her to sell or authorise sale of alcohol at premises licensed for the sale of alcohol. The licence's duration is ten years.
- **Provisional statement** – This is an 'interim' statement as regards the provision of a premises licence where the premises has not yet been built and provides the investors with some degree of certainty as to the future use of the premises.

The Licensing Act 2003 is intended to provide a balanced package of freedoms. It introduces the 'premises licence' and 'personal licences' for all premises engaged in the sale of alcohol. For the first time the sale of hot food or hot drink between 11.00pm and 5.00am for consumption either on premises or as a takeaway will also become a licensable activity.

Persons engaged in the sale of alcohol under the authority of a 'Justices Off-Licence' and those businesses (shops or garages) that presently sell hot food or drink to customers for consumption on or off the premises between 11.00pm and 5.00am, or provide facilities that enable food or drink to be heated above the ambient temperature should be considering the implications of the Act on their business. Businesses wishing to continue to sell alcohol or provide hot food or drink to customers as above post the changes should commence to prepare for its implementation.

Disqualified premises

The Licensing Act 1988 amended the Licensing Act 1964 to include the provision that ***premises primarily used as a garage are disqualified for holding a justices' licence***. The Licensing Act 2003 re-enacts that provision. (See below for definition of primarily used)

Permitted hours

At present current legislation restricts the hours that shops premises trading under a 'Justices Off-licence' can sell alcohol. The Licensing Act 2003 removes 'permitted hours' and allows for the potential of 24 hour sales subject to any conditions that the Licensing Authority considers necessary to promote the objectives of the Act.

In promoting the objectives of the Act and seeking to encourage a growing economy the Council through its licensing policy proposes that shops, supermarkets and other stores are allowed to sell alcohol by retail sale **during their normal trading hours**.

If you presently sell alcohol under the authority of a 'Justices Off-Licence' or provide hot food and or drink between 11.00pm and 5.00am and want to continue to do so after the Act comes into force you will need to apply to the Council for a premises licence during the transition period.

WHEN WILL THE ACT COME INTO FORCE?

The transition period

A 9 month transition period will commence on 7 February 2005, the 1st appointed day.

1st appointed day – The transition period will start with the 1st appointed day. During the first 6 months of this transition period the Council will be able to accept and determine applications for transferring existing Justices licences into the new regime of licences. Justices licences will continue to apply during this period.

2nd appointed day – 9 months after the 1st appointed day (November 2005) and marking the end of the transition period. New licences issued by the Licensing Authority under the Licensing Act 2003 will take effect and the validity of Justices licences will cease. Following the end of the transition period, all licence applications will be treated as 'new applications'.

How can I apply to either vary an existing licence, or apply for a new licence that is to be effective BEFORE the end of the transition period?

Applications must be made to either the Magistrates' Court (with regard to liquor licences) or the local authority (with regard to public entertainment licences), as these existing licensing systems continue to run in parallel with the provisions of the Licensing Act 2003, until the '2nd appointed day'.

APPLICATIONS THAT CAN BE MADE TO THE COUNCIL DURING THE TRANSITION PERIOD

During the transition period there will be 3 key types of applications that can be made to the Council:

Conversion applications (grandfather rights) – These are applications made within the first 6 months of the transition period whereby there will be a presumption that existing licensed premises will be granted a new premises licence unless there are any police objections on grounds of crime prevention. Also holders of justices licence will be able to apply for a conversion to a personal licence.

Variation applications (grandfather rights with variation) – These are applications made within the first 6 months of the transition period where the applicant wishes to vary a part of his/her current licence permissions. For example, he/she may wish to extend their hours. The variations applied for must be advertised and copies given to responsible authorities. The police can make representation in respect of the whole application, however interested parties and other responsible authorities can only make representation in respect of the variations.

New applications – These are applications made by persons who either do not hold a licence at the start of the transition period but wish to have a licence effective from the end of the transition period.

Where applications for a premises licence involve the sale of alcohol, that application must identify the person nominated as the designated premises supervisor.

Any application for a premises licence must also include a form of consent given by the individual whom the applicant wishes to have specified in the premises licence as the DPS.

What is a designated premises supervisor (DPS)?

A designated premises supervisor (DPS) is the person identified as such for a particular premise who is named on the premises licence. Any premises where alcohol is supplied under a premises licence must have a DPS. It is expected that the DPS will be the point of contact for the premises at all times for licensing authorities, or the police or fire services if problems occur at the premises and will be named in the **operating schedule** for any premises with a premises licence. The DPS may not necessarily be the premises licence holder, although this may sometimes be the case.

What is an operating schedule?

The operating schedule is a document which the applicant sets out various details on how the premises is proposed to operate when carrying on licensable activities. It must include the following information:

- The licensable activities to be carried out; eg sale of alcohol;
- The proposed hours that the relevant licensable activities are to take place;
- The proposed hours that the premises are to be open to the public;
- The duration of the licence (if it is to have a fixed term);
- Details of who is to be the designated premises supervisor if the licensable activities include the supply of alcohol;
- Where alcohol is to be supplied, whether the supplies are proposed to be for consumption on and/or off the premises;
- A statement of the steps the applicant proposes to take to promote the licensing objectives (eg how will you ensure no sales of alcohol to under age persons?); and
- Such other matters as may be prescribed.

The significance of the operating schedule is that if the application for the premises licence is granted, it will be incorporated into the licence itself and will set out the permitted activities and the limitations on them.

REPRESENTATIONS

All interested parties and responsible authorities will have a period in which they can make representations to the licensing authority about variations and new applications.

Interested parties – are residents and businesses in the vicinity of the premises

Responsible authorities – include police, fire service, health and safety, environmental health, planning and child protection

Representations must relate to the 4 licensing objectives. If the licensing authority considers that the representations are relevant it must hold a hearing to consider those representations (unless all agree that this is unnecessary).

REVIEWS

An interested party or responsible authority can, at any time, apply to the Council for a review of a premises licence on a ground relating to the licensing objectives. The person or body requesting the review must notify the holder of the premises licence and each responsible authority of their request. The Council must advertise the application for the review and invite representations from responsible authorities and interested parties.

The Council can reject any ground for the review if it considers it is frivolous, vexatious or a repetition. If not rejected, the licensing authority must hold a hearing to consider the application.

HEARINGS

The Council through its Licensing Sub Committee will hold a hearing if there are relevant representations about an application or a relevant request for a review. The Sub Committee will have choices as to how it proceeds depending upon what is necessary for the promotion of the licensing objectives. It may:

- Decide to grant or vary the licence in the same terms as it was applied for
- Decide that it is necessary to refuse to issue or vary the licence
- Decide to grant or vary the licence, but to modify the conditions
- Exclude from the scope of the licence a licensable activity.

APPEALS

If the Council's Licensing Sub Committee rejects a licence then the applicant has the right of appeal to the Magistrates' Court.

FURTHER INFORMATION ON THE LICENSING ACT 2003 MAY BE OBTAINED FROM THE FOLLOWING WEBSITES:

North West Leicestershire District Council at www.nwleics.gov.uk and follow the links for Licensing Act 2003

Government Department for Culture, Media and Sport at www.culture.gov.uk

The Institute of Licensing at www.instituteoflicensing.org

North West Leicestershire District Council Licensing Section contact details:

Personal visit to: North West Leicestershire District Council Council Offices Coalville Leics LE67 3FJ An appointment system is in operation. Please make an appointment prior to attending	Writing to us at: The Licensing Section North West Leicestershire District Council Council Offices Coalville Leics LE67 3FJ
Email: licensing@nwleicestershire.gov.uk	Phone: 01530 454775/844/838/528
Internet: www.nwleics.gov.uk	Fax: 01530 454506

Meaning of 'primarily'

What does 'primarily' mean? For the Oxford English Dictionary it means 'in the first place, first of all, pre-eminently, chiefly, principally, essentially' (OED, vol XII, p472).

It is submitted, there must be significantly more garage use than other use for the premises to be disqualified. If there is roughly the same use, for example, as a shop and as a garage, there is no primary use and therefore no disqualification. Any tribunal must be satisfied on a balance of probability that the premises are primarily used as a garage, otherwise the premises are not disqualified.