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Personal licence renewals abolished and new Guidance issued

BRIEFING

Good news for all the licensed trade and petrol stations

Introduction

The Deregulation Act 2015 ("The Deregulation Act") gained Royal Assent on 26 March 2015 and the revised guidance issued under Section 182 of The Licensing Act 2003 ("the 2003 Act") has been published on the 27 March 2015 ("the New Guidance").

Changes introduced by the Deregulation Act

Personal licence renewals

The requirement to renew personal licences has been abolished with effect from 1 April 2015. This change will come as a huge relief to the licensed trade, faced with the mammoth task of renewing thousands of personal licences that have been granted from February 2005 onwards.

This legislation is somewhat overdue in that those who had personal licences granted between February and April 2005 will have needed to apply to renew their licences. However, it is better late than never!

The abolishing of the requirement to renew a personal licence does bring into question the overall value of the personal licence itself but perhaps this debate is for another day.

Selling liquor confectionary to children

The Deregulation Act also abolishes the offence of selling liquor confectionary to children under 16 with effect from 26 May 2015. After that date, a person of any age can buy liquor confectionary in England and Wales.

As this applies to England and Wales only, we question whether we can expect to see liquor chocolate booze runs from across our northern border!

Requirement to report lost or stolen licences

The requirement to report lost or stolen licences to the police before applying for duplicates will be abolished from 26 May 2015. This is another reform which is to be welcomed. It has been a frustrating waste

of both public and private resource to have to report stolen licences to the police (who tended to be somewhat bemused by such reports) and this requirement served no purpose.

Temporary Event Notices

The limit on the number of temporary events that can be held at single premises will be increased from 12 to 15 per year from 1 January 2016.

Late Night Refreshment

There is still a proposal pending to allow licensing authorities to remove the requirement for certain types of premises in certain areas to be licensed for late night refreshment. We are told that the Government ran out of parliamentary time to make the necessary regulations and it will be up to the new Government to decide how to take this proposal forward.

New Guidance

By way of reminder the licensing authority must, when considering an application for a new premises licence or a variation, have regard to the Licensing Act 2003, the Guidance issued pursuant to section 182 of the 2003 Act and its own Statement of Licensing Policy.

The Home Office has today published a revised Guidance ("the New Guidance"). The previous guidance was published in October 2014.

Petrol Stations

We are delighted to be able to claim some credit for a change in that appears in the New Guidance.

The previous Guidance stated as follows:

1. The licensing authority must decide whether or not the premises are used primarily as a garage. The accepted approach is based on "intensity of use" to establish "primary use". For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers

purchasing the products or services listed above, it may be illegible to seek authority to sell or supply alcohol.

2. Where there is insufficient evidence to establish primary use, it is for the licensing authority whether to grant the licence and deal with any issues for reinforcement action and it may be able to use its case management powers to enable further evidence to be obtained.

We have argued for some years (the above statements have appeared in several issues of the guidance) that these paragraphs are unlawful as they create a new and separate test to secure a premises licence for a petrol station. The Guidance supersedes the actual requirements set out in the 2003 Act itself. We have been in direct contact with the Home Office to lobby for a change in the guidance to reflect what in our opinion, is the law.

The 2003 Act provides that no licence has effect on premises if the primary use is that of a garage. This implies that a licence has been granted. The 2003 Act does not state that in order to be granted a licence an applicant must prove that the primary use is not that of a garage.

Unfortunately some applicants (not advised by this firm) have submitted primary use data as part of their applications. Some licensing authorities have insisted that applicants provide such data so that they can determine the primary use of the premises.

The request for data is not, in the writer's opinion, a requirement of the 2003 Act but has been introduced through Guidance. We have had the opportunity to meet with and engage with the Home Office and we are delighted that the relevant officials have agreed with our view and the Guidance has been revised. The New Guidance states as follows:

1. It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in sections 17(3) and

(4) which must accompany the application.

2. If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is.

The documents of information required in sections 17(3) and (4) relate to all premises licence applications and not just garages. The second paragraph could be worded better. We have already spoken to the Home Office who have confirmed that the intention of this paragraph is that the decision on primary use follows the grant of the licence and is not part of the application process. We are hoping to get some form of written confirmation of this clarification from the Home Office.

We expect that the revisions contained in the New Guidance will put an end to licensing officers and licensing committees asking to see primary use data as part of an application process. However, we must stress that it is incumbent on all operators of petrol stations to monitor their primary use on a regular basis. Should a store be primarily used as a garage then any alcohol sales from that store would be unlawful. The licence holder could be liable to prosecution or face a review of its licence.

Other Changes to the Guidance

We are pleased to see a small change in the Guidance which states that licensing authorities should not hold hearings for uncontested applications, for example where representations have been made and then conditions subsequently agreed. This again is one of the submissions we made to the Home Office as we do come across some licensing authorities that insist on a

hearing even where all representations have been withdrawn.

Conclusion

The changes today are good news for the licensed trade. Abolishing the requirement to renew a personal licence will result in a huge cost saving to both the trade and the licensing authorities and is welcomed.

The change in guidance on petrol stations is also good news and we wish to put on record our own thanks to the Home Office for listening to our submissions on this issue.

For further information – please contact:



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