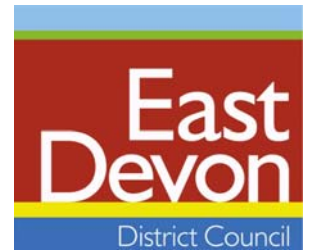




Local Licensing News

(Includes News of the Licensing and Gambling Acts)



Issue 4

Christmas 2007

In This Issue

This issue includes items on the Licensing Act Policy, the smoking ban and how we are dealing with it, gaming machines and poker in licensed premises, some Health and Safety issues as they affect the licensing trade, Licensing Act enforcement and our office opening hours over the festive season.

Statement of Licensing Policy

The Licensing Act 2003 requires the Licensing Authority to review its Statement of Licensing Policy at least every three years. Our current policy will expire in January and will need to be replaced by an updated and revised policy by the 7 January. We have reviewed our policy and held a consultation which closed on 9 November 2007. We are writing to all those who responded to the consultation. The new policy was adopted by the Council on the 12 December. Copies are available from the Licensing Office and on our website shortly.



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Smoke Free Legislation

It is now nearly four months since the Health Act 2006 (the 'smoking ban') came into force in England and smoking in enclosed or substantially enclosed spaces became illegal. Reaction has been mixed but on the whole the ban appears to have been welcomed by the public.



Smokers - naturally – have a rather different opinion!

From our perspective as the Licensing Authority, the ban appears to have worked well with few reported problems of non-compliance. Both licensees and the public deserve our sincere congratulations for their co-operation in helping to make the legislation work. Having said that, the ban has caused a number of problems which are outlined below.

Noise - Noise and disturbance from customers smoking outside premises is by far the most common complaint. This becomes more of a problem late at night when people have consumed more alcohol and tend to be noisier.

Litter - Customers smoking outside premises often discard their cigarette butts on the pavement or in

the street. This not only looks unsightly, it constitutes a public nuisance that undermines one of the objectives of the Licensing Act 2003.

Broken Glass - Inevitably, when customers drink outside premises, glasses are dropped and broken. This can be dangerous and there are obvious implications for public safety.

There are a number of things which licensees need to be aware of in relation to the smoking ban. Firstly, read the conditions of your Premises Licence! Some licences have conditions which prohibit customers taking drinks off the premises. This means that if customers are going to smoke outside, they must leave their drink inside. Some premises have a terminal hour for admission (e.g. midnight). So - a smoker who nips out for a quick cigarette and finds him/herself outside the premises after the terminal hour will not be able to get back in! Others have a condition requiring all litter to be cleaned up at the end of each trading session or day. This will, of course, include cigarette waste.

Tips to Tackle Smoking Problems

1. If you have a beer garden or outside area, encourage your customers to use it rather than smoking on the street. (Large groups of smokers outside premises can often appear intimidating, especially to single women and children).
2. Ensure those using your outside areas do not cause a nuisance to your neighbours – consider closing these areas early. Remember your neighbours also want to enjoy their property or gardens peacefully.
3. If you have a condition on your licence prohibiting customers from taking drinks outside, put up a notice informing them of this. Make sure your staff (and Door Supervisors if you have them) are aware of and enforce the condition.
4. Consider putting up notices at all exits to the premises asking your customers to respect the needs of local residents and to keep noise to a minimum.
5. Make sure any areas used by smokers are regularly swept and cleansed – at least at the end of each day.
6. Consider installing purpose-made cigarette waste disposal bins outside your premises. This will help to reduce littering and unsightly waste.

7. Instruct your staff to regularly monitor any external areas to ensure that empty glasses and bottles are promptly collected. This will reduce the risk of glass being broken and keep the area safe for public use.
8. Make sure any customers smoking and/or drinking outside your premises behave in an orderly manner. You are responsible for the behaviour of your customers in the immediate vicinity of your premises. It is in your interests to ensure that they do not cause a nuisance to residents or passers-by.
9. If you are affected by nuisance from people smoking/drinking outside premises, have a friendly word with the licensee or DPS. Often they may not be aware there is a problem and many local difficulties can be amicably resolved.

As ever, the key to preventing nuisance is good management of premises and striking the right balance between the legitimate rights of smokers and the needs of nearby residents and businesses. Further information and guidance can be found on the Smokefree England website at www.smokefreeengland.co.uk

New Year's Eve and other Seasonal Variations

With Christmas and New Year approaching you should check your entitlements for New Year's Eve and other Bank Holidays. Please take the opportunity now to check that your licence permits you to open for the hours you plan over the Christmas holiday period. Should your licence not permit you to open for the hours you want you should consider in the longer term applying for a variation for next year. In the short term you can extend your licensing hours by the use of a Temporary Event Notice, but there are notice restrictions on these – check with the Licensing Office.



AWPs – what the new legislation means

The Gambling Act 2005 makes special provision for various types of gaming to be offered, without a specific permission, in certain premises which sell or supply alcohol. These exemptions apply only where:

- ❑ there is a Premises Licence under the Licensing Act 2003 which authorises the supply of alcohol for consumption on the licensed premises
- ❑ there is a bar at which alcohol is served without a requirement that it is served only with food.
- ❑ it is provided at times when alcohol can be served under the Premises Licence.



- There is an automatic entitlement for one or two gaming machines of Category C or D provided that:
- ❑ the licence holder sends the Licensing Authority written notice of his intention to make gaming machines available under Section 282 (1) and the prescribed fee.
 - ❑ any relevant provision of a code of practice about the location and operation of a gaming machine is complied with.

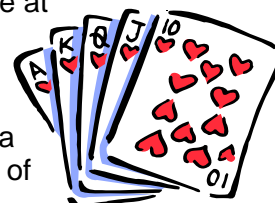
All existing permits, issued under the previous legislation by the Magistrates' Court or by the Licensing Authority since 24 November 2005, will continue to run until their three year expiry date. Before expiry, the premises licence holder will have to apply for an Alcohol Licensed Premises Gaming Machine Permit, at a cost of £100 where Grandfather Rights apply, or £150 if new. A £50 annual fee is payable. However, for up to two machines, a notification must be provided to the Licensing Authority. This is a cheaper option with a one-off payment of £50, lasting until the Premises Licence (under Licensing Act) is transferred to a new proprietor.

Those with Club Premises Certificates are in a slightly different position. These premises, including those which do not provide alcohol, are allowed three machines, in B4 category or below, with a maximum payout of £250. They can also have a lottery machine (B3A) with a payout of up to £500. Existing registrations, arranged before 1 September 2007, remain in place until their expiry. To keep the entitlement, an application must be made to the Licensing Authority for a new Club Machine permit (or a Club Gaming Permit if extended types of gaming, with stake limits, are also required) before the old registration expires. A copy must be sent the Police for their comments. Commercial clubs, run for profit rather than for the benefit of members, can have similar permissions but no B3A machines.

Finally all premises with gaming machines must comply with the Gambling Commission Code of Practice, which is available on both the Commission's and the District Council's websites. In essence, this puts certain duties on proprietors of premises to ensure that under 18s cannot access machines and other gaming activities. They must therefore be positioned so that they can be properly supervised by staff and ensure that ATM machines cannot be accessed whilst machines are being played.

Poker and Other Exempt Gaming

Low stake poker can be played in pubs, providing no charges or levies are made at any point within the game, and no more than £5 per person per game (not per hand) is staked, with a maximum stake and prize of



£100 per day. The provisions for Bingo in pubs are similar.

In clubs there is a poker stakes limit of £10 per player per game (not per hand) as well as aggregate stakes limits of £250 per day and £1000 per week for each individual club or institute. There are no limits on stakes and prizes for games of bingo played in clubs. However, clubs or institutes that wish to offer high turnover bingo with stakes or prizes exceed £2000 per week will require a bingo operating licence from the Gambling Commission.

Race nights and Casino nights in pubs and clubs can also be played providing there is no 'private gain', i.e. the money goes to a good cause which is advertised beforehand. Reasonable expenses can be deducted but the licensed premises can make no charge, though the provision of refreshments is not included within this. There are also limits on the amount of money to be transacted. No participant may pay out more than £8, including entry fees and stake money, and up to £600 may be paid out in prizes.

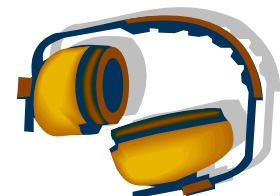
This information is based on guidance from the Gambling Commission but you should seek your own legal advice where necessary.

The Gambling Commission document "Guidance on gaming on Alcohol Licensed Premises" is available to download from its website –

www.gamblingcommission.gov.uk – or you can telephone 0121 230 6500.

Is Your Business Safe?

The Control of Noise at Work Regulations 2005 came into force for all industry sectors in the UK in April 2006 but those businesses in the music and entertainment sector were exempted from complying with the legislation until the 1 April 2008. To help licensed businesses in Devon get ready for these changes all ten Devon Local Authority Environmental Health Departments will be running regional workshops across Devon early in 2008. The aim of these regulations is to ensure that workers' hearing is protected from excessive noise at their place of work, which could cause them to lose their hearing and/or to suffer from tinnitus (permanent ringing in the ears). The workshops are aimed primarily at nightclubs and venues providing musical events. They will also cover other safety issues including electrical safety, slips and trips, work at heights, laser issues and asbestos. Anyone wishing to attend a workshop should contact Mrs A Ferrero in the Environmental Health Department at the Council Offices at Sidmouth by either email – aferrero@eastdevon.gov.uk or phone 01395 571581.



The Control of Noise at Work Regulations replaces the Noise at Work Regulations 1999 and places a

greater control on the level of workplace noise. The levels at which employers must provide hearing protection and hearing protection zones is now 85 decibels (daily or weekly average exposure), and the levels at which an employer must assess the risk to their employees health and provide them with information and training has been reduced to 80 decibels. An upper limit of 87 decibels has also been introduced above which no workers should be exposed. Depending on the size of your venue, type of equipment you use and the way in which your speaker system is set up your premises may be exceeding these levels.

To ensure compliance employers should consider various factors to help protect the health of their staff. These should include:

- Direction and placement of speakers.
- Sound absorbing materials such as wall and floor covering.
- The nature of duties staff undertake, their location and level of exposure.
- The trialling and provision of suitable personal noise protection equipment.

This is by no means an exhaustive list however these areas and other issues will be illustrated in detail at the forthcoming training events.

No Laughing Matter

You may have heard about nightclubs where Nitrous Oxide (also known as laughing gas, Nos or hippy crack) is supplied for customers to inhale.



Typically, the nitrous oxide is contained in a small cylinder which is then used to fill a balloon from which the gas is inhaled.

What you may not know is that this activity is illegal. Nitrous Oxide is a pharmacy only medicine when prepared for inhalation and may only be supplied in this form by a registered pharmacist on the premises of a registered pharmacy. The maximum penalty for this under the Medicines Act 1968 is two years in prison and/or an unlimited fine. There are genuine health risks attached to the use of Nitrous Oxide, both directly resulting from its consumption and in terms of injuries resulting from a fall induced by its effects. The risks include death, blood cell suppression and poisoning of the central nervous system. These risks are likely to be exacerbated if the drug is combined with alcohol or other narcotics. The risks are particularly severe for pregnant women.

Under the Health and Safety at Work Act 1974 anyone operating a business has a duty to protect people on the premises (including customers) from risks to their health and safety. The promotion of public safety is also one of the core objectives of the Licensing Act 2003 and failure to promote this

objective could have serious implications for the holders of Premises licences issued under that Act. If you require any more information on this, contact the Commercial Team in Environmental Health Service on 01395 517456.

Customer Transport

Do you make a vehicle available to collect or take your customers/members home after a night out or for excursions from your pub/hotel/club? If you do the vehicles and the drivers used to provide that transport will almost certainly need to be licensed by this Council or the Traffic Commissioners depending on the size of the vehicle used. It does not matter that the service is provided free of charge. If the vehicle and driver are not properly licensed most insurance companies will invalidate the vehicle's insurance cover. Vehicles currently used for contracts lasting at least seven days are exempt from the requirement to be licensed as a taxi or Private Hire vehicle and is commonly known as the "contract exemption". This changes on the 28 January 2008 when these vehicles and their drivers will also need to be licensed. Other examples of vehicles that will need to be licensed after the law changes include those commonly used for school and hospital contracts, limousines, airport transfers, chauffeur-driven services and volunteer vehicles if they come within the definition of a "private hire vehicle". Vehicles, drivers and operators will need to be licensed so if you consider you could be affected and want further information please contact the Licensing Service on 01395 517411.

Under Age – Under Investigation

Public concern about binge drinking and under age drinking continues to be the focus of press and television reports.

A programme of test purchases is carried out by Devon Trading Standards in conjunction with the Devon and Cornwall Constabulary. In some parts of the county the results have been disappointing, with a high level of successful under-age alcohol purchases.

Selling alcohol to under 18s

Under Section 146 of the Licensing Act a person commits an offence if he sells alcohol to an individual aged under 18. There are similar offences in the case of club premises.

There is, however, a defence where the person believed that the individual was aged 18 or over AND either:

- (a) he had taken all reasonable steps to establish the individual's age, or
- (b) nobody could reasonably have suspected from the individual's appearance that he was aged under 18.

All 'reasonable steps' to establish an individual's age will be considered to have been taken if the

individual was asked for proof of age and the evidence would have convinced a reasonable person – such as passport, photo driving licence, proof of age card with the Pass mark. Never accept a proof of age that does not contain a photograph of the person you are checking. Please contact the Licensing Team for details of the 'Challenge 21' or 'Challenge 25' schemes.

Where a person is charged with an offence by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing the offence.

Allowing the sale of alcohol to children

Under Section 147 of the Licensing Act 2003, any person who works at a premises or club in any capacity, whether paid or unpaid, who could have prevented a sale commits an offence if he knowingly allows the sale of alcohol to an individual aged under 18. The same offence applies to any member or officer of a club who at the time of the supply is present on the relevant premises in a capacity, which enables him to prevent it.

Purchase of alcohol by or on behalf of children

Under Section 149 of the Licensing Act 2003, an individual aged under 18 commits an offence if he buys or attempts to buy alcohol. It is also an offence to buy or attempt to buy alcohol on behalf of an individual under 18.

The maximum fine for these offences is £5,000 and it could affect the premises licence.

Holiday Office Hours

The Council Offices at Sidmouth will be closed from 4.00 pm on Monday 24 December 2007 until 8.30 am on Wednesday 2 January 2008.

If you are arranging an event to take place between 11 January and 16 January 2008 which requires service of a Temporary Event Notice the Licensing Team would be grateful for the notice to be served no later than Noon on Monday 24 December 2007.



2008

Although some legislation will continue to change we do not anticipate that 2008 will be anything like recent years. We hope you will take the opportunity to consolidate and in the case of Premises licence and certificate holders ensure that you are fully complying with your Operating Schedule. As always if you have any queries or problems please don't hesitate to contact us. Finally, the Licensing Team take the opportunity to wish you and your staff a very Happy and Prosperous Christmas and New Year.

For further information please contact us at:

Licensing Service
East Devon District Council
Knowle, Sidmouth, EX10 8HL

Telephone: 01395 517410/517411

Email: licensing@eastdevon.gov.uk

Website: www.eastdevon.gov.uk/licensing