

The 2003 Licensing Act - what you need to know



A factsheet on the 2003 Act.
Responding to your
local licensing policy

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UPDATE ON LICENSING ACT 2003 (November 2004)

The countdown to the reform of licensing laws in England and Wales(*) began on 7th July 2004 with the publication of National Guidance. The Guidance is intended to assist licensing authorities deliver the reforms to be brought about by the Licensing Act 2003, including flexible opening hours. In addition, police officers have been provided with guidance on using closure powers within the Licensing Act to deal with problem premises, where disorder, or likely disorder, or noise nuisance is occurring.

(* For more detailed information about new licensing laws see booklet **“How to get the most out of the Licensing Act – Licensee’s Guide”** – published August 2003 - available from the BII website – www.bii.org)

A second edition of the guide will be published as soon as we have all the final information regarding the implementation of the new legislation.

The likely timetable for delivery of the new licensing laws is:

7th July 2004	Guidance issued. Local Authorities begin to consult on draft licensing policy statements.
15th Sept 2004	Publication of draft regulations for public consultation. (These Regulations will specify the detailed requirements of the Licensing Act, e.g. forms.)

7th February 2005 **First Appointed Day – licensing authorities can begin processing licensing applications under the new regime.**

NB – In the meantime, Magistrate Courts will continue to administer the licensing system under previous legislation.

Approximately November 2005 **Second Appointed Day – the new licensing regime begins and new licences take effect.**

(The final date is subject to confirmation by Government.)

Now that the Guidance has been published, licensing authorities in England and Wales have three months in which to prepare, consult on and publish their Statements of Licensing Policy (final policies should be published by local authorities by 7th January 2005, one month prior to the First Appointed Day).

Many local authorities have now published their draft Licensing Policies and are consulting relevant authorities and other interested parties.

It is vitally important that licensees respond to consultations in their area (particularly licensees who may wish to vary their premises licence or those who will be submitting operating schedules) as any proposals could have a significant effect on their businesses.

Licensees should have been sent a copy of their local licensing authority's draft policy but if not, you should contact your local Council to request a copy. Links to all policies available have also been posted on the website of the British Beer & Pub Association.

http://www.beerandpub.com/content.asp?id_Content=765

The following guidance is provided to assist licensees in responding to consultations:

1 Licensing authorities must set out within their policies how they intend to promote the **four licensing objectives** of the Act.

These are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance; and
- the protection of children from harm

2 All licensing policies should have been prepared having regard to the **Guidance** issued under section 182 of the Licensing Act (see above), which provides greater clarity and interpretation of the Act. (The guidance can be downloaded from the DCMS website):
http://www.culture.gov.uk/alcohol_and_entertainment/licensing_act_guidance+.htm

3 Licensing policies should make it clear that each licence application will be considered on its individual merits – what may be considered to be a problem with a high street pub would not present the same risk in a village or community pub. Under the Act, Local Authorities acting as the Licensing Authority are required to exercise their discretion when considering objections to a licence from responsible authorities such as police, fire and crime, and disorder reduction partnerships. A licensing authority cannot impose conditions except where there are valid objections on the grounds of one of the licensing objectives. In the event of an objection the relevant authority (police, fire authority, environmental health) may

advise, but only where an objection is upheld following a hearing can the licensing authority attach a condition. A licensing authority **cannot impose blanket conditions**:

Examples of blanket conditions would be:

- **capacity limits on all licensed premises**
- **restrictions on permitted hours**
- **bottle bans across all licensed premises**
- **requirement for CCTV**
- **requirement for toughened/shatterproof glass**
- **requirement for no smoking areas where children are admitted**
- **restrictions on drinks promotions/minimum pricing policies**
- **requirement to join Pubwatches etc**

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There is no mechanism in the Licensing Act for licensing authorities to:

- insist that the **Designated Premises Supervisor (DPS)** or personal licence holder be on the premises at all times, although the sale of alcohol must be authorised by a personal licence holder
- make a judgement on individuals nominated as the DPS although the police can object in certain circumstances
- insist on experience, training or qualifications in addition to the personal licence qualification other than those defined under the Private Security Industry Act.

The Act simply requires a DPS to be nominated for licensed premises where the sale of alcohol is to take place. The DPS must hold a personal licence. The premises licence application should name this person and include a form of consent given by the individual being nominated.

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Particular care should be taken to ensure that policy requirements do not duplicate **existing legislation**. The only conditions which should be imposed on a premises licence are those which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder.

Examples of commonly duplicated legislation include:

- Disability Act 1995 – access provisions
- Health and Safety legislation (e.g. Health & Safety at Work Act, COSHH, Electricity at Work Regulations, Fire Precautions (Workplace) Regulations 1997, Gas Appliances (Safety) Regulations 1992

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Some draft policies may contain requirements for applicants to demonstrate how they will manage and control matters which are irrelevant or over which they have no control/responsibility. Examples of these are:

- Requiring premises in close proximity of each other to jointly demonstrate to the Council through their Operating Schedules that their requested operating hours, through negotiation with each other, will not impact on the local area.
- Requiring the operating schedule to demonstrate how the availability of taxis-mini-cabs has been improved for customers leaving the premises.

- Requiring arrangements to be put in place to ensure that litter does not cause a nuisance.
- Demonstrating what measures have been taken to avoid movement of people in search of premises opening later.
- Demonstrating what measures have been put in place to prevent round-buying.

It is important to work with local authorities during the consultation period and respond to policy plans, particularly where they do not follow the national guidance or are unnecessarily restrictive or may harm your business.

Remember – this is your chance to make your views heard before the new system is introduced in your area!!

For further information please contact:

British Institute of Innkeeping (BII)

(T) 01276 684 449

Website: www.bii.org

The British Beer and Pub Association (BBPA)

(T) 0207 627 9191

Website: www.beerandpub.com

The Guild of Master Victuallers and the

National Parliamentary Committee of LVA.

Contact: **John Madden, Executive Officer**

(T) 01708 447 899

National Pubwatch

Email: national.pubwatch@btinternet.com

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Licensed Victuallers Wales

(T) 01873 830 415

Email: gjohnlvales@hotmail.com

Federation of Licensed Victuallers Associations

(T) 01484 710 534

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Association of Licensed Multiple Retailers

(T) 0208 579 2030

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