



Local Licensing News

News and Legislation Update



Issue 3

Spring 2007

Welcome

We hope that this third edition of our newsletter proves helpful especially with the smoke free legislation arriving in July and all that needs to be considered before then. We also have other useful bits of information for you.

Officer Inspections

The Council's Licensing Officers are visiting licensed premises within the district. Some of these visits are unannounced and accompanied with our Police Licensing colleagues. Our purpose is to assist and give advice to enable businesses to comply with the legislation. Officers are however concerned with the number of non-compliance's they have found thus far. For example they have discovered a number of incidents of failure to comply with conditions attached to the Premises Licence and many are still failing to even display a summary or a certified copy of their Premises Licence. It is important that licence holders comply with the legislation and do so quickly, as it is only a matter of time before breaches are followed up with more formal action.

Avoid a £500 Fine

There are several statutory requirements with which a Premises Licence holder must comply in relation to keeping and displaying the licence. Failure to comply with these requirements is an offence for which you are liable on conviction to a fine of up to £500.



These requirements are:

- The licence, or a certified copy, must be kept at the premises to which it relates
- The licence must be kept under the control of the licence holder, or a person who works at the premises and has been nominated in writing by the licence holder
- If a person is nominated to keep control of the licence, a notice specifying the position held by this person must be prominently displayed at the premises
- The licence holder or nominated person must produce the licence or a certified copy on request to a Police Officer or an Authorised Officer of the Licensing Authority
- The summary, or a certified copy, must be prominently displayed at the premises.

If you have lost your Premises Licence or for any reason do not have your Premises Licence you should contact the Licensing Authority as soon as possible to avoid a potential fine. Similar rules apply to Club Premises Certificates.



Smoke Free Legislation and Licensed Premises

As you will all probably be aware the new smoke free legislation will come in to force on the 1st July 2007. This will mean that smoking in virtually all enclosed and substantially enclosed public places and workplaces will not be permitted. This will include all licensed premises. Premises will be considered substantially enclosed if they have a ceiling or roof, and the openings in the walls are less than half the total area of the perimeter walls. Owners/Managers will need to erect signs at each entrance to their premises. The signs must include the international **No Smoking Symbol** and the words "**No Smoking. It is against the law to smoke in these premises.**" [The word "Pub", "Public House", "Restaurant", "Hotel" etc. can be substituted for the word "Premises".] Signs on the outside of the building may need Planning Permission. Alternatively a sign inside the premises is acceptable. For guidance on the Smoke Free Legislation telephone 0800 169 1697 or go to

www.smokefreeengland.co.uk

Health & Safety Issues

You will need to consider the Health and Safety issues if you are looking towards using pavements in front of premises, courtyards, beer gardens, smoking shelters, awnings and canopies etc. Suitable and adequate risk assessments should be undertaken to ensure that the use of any area provides a safe environment for staff and customers.

This should take into account: -

- The use of Mobile Heaters, Patio Heaters, Liquid Petroleum Gas Cylinders (LPG)
- Any structure used should be constructed and maintained in a wind and weatherproof condition

- ❑ Safe access and egress to be maintained to all work areas
- ❑ All drinking vessels/glass should be toughened/safety or plastic
- ❑ Electrical installations should be in accordance with the current Edition of the Institute of Electrical Engineers Regulations
- ❑ Management control and policy should be implemented for smokers leaving and entering the premises
- ❑ Crime and Disorder issues must be taken into consideration

For any further information or help you can contact the Food and Health & Safety Team on 01271 388870 or email ehdirect@northdevon.gov.uk

Public Nuisance

You will need to consider the potential Public Nuisance impact that any increased use of an existing outside area might cause. It is

acknowledged that noise from outdoor areas is difficult to control. Good management is therefore the key in controlling noise from this type of activity and inappropriate rowdy or boisterous behaviour must be challenged when it occurs.

If the outdoor area is licensed then the permitted hours need to be checked. In some circumstances outdoor areas have an earlier closing time than internal areas; this will mean that customers will not be able to use the garden after that time even for smoking a cigarette.

Having live or recorded music outdoors is a licensable activity and needs to appear on the Premises Licence. In general, speakers located externally to buildings will not be permitted. New proposed outdoor areas are likely to need planning permission (see below), and will be assessed on a case-by-case basis taking into account the local situation; proximity of residents; and any previous history of complaints about noise/poor management controls.

Groups of smokers outside are likely to generate noise and litter and this could result in neighbours complaining about the noise and could lead to them asking for the Premises Licence to be reviewed. If justified complaints about noise are received by the Council's Environmental Health Service then appropriate formal action can be taken either by service of an Abatement Notice, or by submitting an application for a Review of a Premises Licence. For any further information you can contact the Environmental Protection Team on 01271 388870 or email ehdirect@northdevon.gov.uk

Smoking Shelters



Permanent external smoking shelter structures (either freestanding or attached to existing buildings), as well as permanent awnings attached to buildings, require planning

permission and you should contact the Council's Planning Service on 01271 388288 to discuss your proposals before making your planning application. In considering your proposals the Planning Service will take account of the following matters:

- ❑ Is the shelter/awning in a prominent location or visible from adjoining highways?
- ❑ If so is it well designed and in character with the existing building?
- ❑ Will the location or the position of the shelter/awning have any adverse impact on occupiers of adjoining residential property in terms of loss of view or outlook, or in terms of noise?
- ❑ Will the location of the shelter/awning result in the loss of valuable parking spaces? If so will this create any parking problems in the vicinity?
- ❑ Will the shelter/awning obstruct the free passage of pedestrians and vehicles on any adjacent footpath or road?

In summary, shelters and awnings should be well designed and sensitively sited in order to ensure their acceptability. For further information contact the Planning Service on 01271 388288

Licensing Variations (Alterations to premises)

Licence holders should remember that if they make any alterations to any area that is covered by the Premises Licence they must make an application to vary the licence.

Licencees should also consider the four licensing objectives when considering providing shelters etc. for smokers. If residents or responsible authorities find that this is causing a problem, for example noise or disorder, then they may submit an application for review. For further information contact the Licensing Authority on 01271 388870.

Ten Tips for the Smoking Ban

With the smoking ban commencing at 6.00 am on Sunday the 1 July 2007 if you haven't taken action yet its time to start. The Regulations in their final form have now been published so operators now know exactly what they can and can't do in terms of providing facilities for smokers. Depending upon what facilities you decide to offer, the necessary preparations may take a significant amount of time and should therefore be embarked upon immediately. The following is a list of useful areas for consideration.

1. Preliminary discussions – Talk to your customers to determine what they would actually want in terms of smoking facilities, if any. You may, for example, decide not to offer any particular smoking facility at your premises due to the insignificant number of smokers who currently come to your premises. On the other hand, you may decide to accommodate smoking with the provision of a fairly basic external area with some form of shelter and ashtrays. You may even decide to go as far as encouraging smoking by the provision of extensive exterior facilities in an attempt to attract more smoking customers to your premises. This will undoubtedly be the more

expensive option and the one which requires the most preparation. You should also talk to your neighbours and the District Council's Environmental Protection Team on 01271 388870 about noise and indeed litter issues arising from the use of an outside area for smoking.

2. Decide upon your offer – If you decide to offer the use of an existing outside area then it may simply be a case of installing an umbrella and some ashtrays. If you have decided to develop an outside area, which is either currently in use or not, you may need some specialist advice in terms of the types of structures which will be permitted under the Regulations. The basic rule of thumb is that the area in question must either have no roof, or have a roof and be less than 50% walled. You may need to organise some more comfortable furniture as well as ashtrays and some form of external heating given the extremes of weather conditions in the UK.

3. Internal Approval – Depending upon the structure of your organisation you may need to obtain approval for your proposal, for example from the Board of Directors.

4. Landlord's Consent – If you hold the premises under a lease or similar agreement then you may need to obtain the consent of your landlord to the carrying out of any alterations to the premises.

5. Signage – All smoke free premises (and vehicles) will need to display the prescribed 'No Smoking' signs in a prominent position at every public entrance to the premises. These must meet the following minimum requirements:-

- Be a minimum of A5 in area (210mm x 148mm)
- Display the international No Smoking symbol
- Carry the words, 'No Smoking. It is against the law to smoke in these premises'

Signs can be downloaded and printed or ordered FREE OF CHARGE from www.smokefreeengland.co.uk or by calling 0800 169 1697.

6. Planning – Does your chosen outside area fall within the existing planning permission for the use of your premises? If not, you may have to apply for change of use. In addition, the erection of any permanent structure in an outside area may require planning permission in any event. The distinction between permanent and temporary structures is a question for the Council's Planning Service 01271 388288 and you should discuss this with them. **You should also make sure that there is no restriction on your planning permission in terms of the terminal hour of usage of any outside area.**

7. Licensing – You may need to apply to vary your licence if there are any conditions on the licence which restrict the movement of people between areas inside and outside the premises. Sometimes there are conditions limiting the terminal hour of usage of an outside area or indeed preventing the taking of drinks to the outside area

beyond the stated terminal hour. Equally, premises which have later licences may have restrictions upon the last entry or re-entry of customers. These sorts of conditions may restrict smokers popping outside for a cigarette during the later part of trading. Further advice is available from the Licensing Authority 01271 388870.

8. Gaming Machines – Research demonstrates that the use of gaming machines dropped dramatically in Scotland and Ireland due to users' inability to smoke whilst they are playing. This may lead to operators wishing to site gaming machines in outside areas which is not impossible as long as adequate levels of supervision are in place. However, since machines must be sited within the licensed area an application to vary the licence may be required once again to include at least part of the outside area within the licence. Further advice can be obtained from the Licensing Authority 01271 388870.

9. Finance – You will need to make arrangements to organise the necessary finance to enable your proposed works to be carried out.

10. Do it! - Quotes should be obtained from contractors and instructions given to your chosen supplier to actually carry out the work.

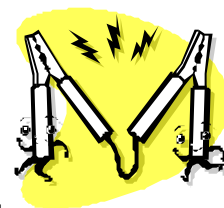
(With thanks to Poppleston Allen Solicitors)

Electrocution Risks at Musical Events held in Licensed Premises

Recently a Guitarist was electrocuted when approximately 230 volts AC travelled between the strings of his guitar and an amplifier lead he was holding.

The Health and Safety Executive (HSE) has advised that electricity supplies for all equipment used by entertainers, including microphones, should be protected by a 30 mA Residual Current Device (RCD) as a reasonably practicable means of providing supplemental protection against the risk of severe electric shock or electrocution (death). An RCD must never be relied upon as a primary or sole means of protection against severe electric shock or electrocution - the entertainer's equipment must still be suitably constructed and maintained. RCD protection should always be provided as an additional and often extremely effective control measure.

For any further information or help you can contact the Food and Health & Safety Team on 01271 388870 or email ehdirect@northdevon.gov.uk



Your Waste - Your Business Environmental Protection Act 1990

Under the Environmental Protection Act 1990 businesses have a duty of care for all their waste, including



general rubbish and things that can be recycled. The council can only provide free services for household waste collections. Business rates do not cover a trade waste collection service. There are substantial penalties that the courts can impose and there are fixed penalty fines for breaches of the Environmental Protection Act 1990 and The Clean Neighbourhood and Environment Act 2005. The purpose of this legislation is to reduce fly tipping and unauthorised disposal of waste.

Businesses must keep records of how they have disposed of their waste. They can be asked to produce these records for examination. There is substantial penalty for failing to keep and produce records of waste disposal. Records have to be kept for two years. Businesses must not use unauthorised unlicensed waste carriers who may fly tip the waste elsewhere. Recycling banks, which include bottle banks, are provided for domestic use only and are not for trade waste.

The Council has a low tolerance of environmental offences and will prosecute offenders

You can get more information from:

The Council's Works Unit by telephoning 01271 340394 or through the Council's website www.northdevon.gov.uk

The Department for Environment Food and Rural Affairs (DEFRA) on 08459 556 000 or on their website at <http://www.defra.gov.uk/>

The Environment Agency's website to check whether a waste carrier is licensed is <http://www.environment-agency.gov.uk> and look in public registers.

ENCAMS (Environmental Campaigns) on <http://www.encams.org/home/>

Recycling trade waste information on: <http://www.recycledevon.org/html/pages/index02.asp>

Gaming!

As reported in our last newsletter the Gambling Act 2005 comes into full force on 1 September 2007 with the three objectives of:

- Keeping gambling crime free
- Making sure that gambling is fair and open
- Protecting children and vulnerable adults



The Council agreed its Statement of Gambling Policy on the 22nd November 2006 and a copy can be accessed from within the licensing pages of the Council's website or alternatively on request to the Council's Licensing Office.

The new legislation does not make great changes to the use of gaming machines in alcohol licensed premises.

Up to 31 August 2007, you may apply to your licensing authority (North Devon District Council) to renew your existing Section 34 permit or for a first Section 34 permit, in the normal way. Where you already have an existing Section 34 permit this will continue to have effect after 1 September 2007 as

if it were a licensed premises gaming machine permit issued under the new Act.

After 1 September 2007, the following arrangements will apply:

- Up to two gaming machines** – Pubs will have an automatic entitlement to two gaming machines, subject to a simple notification procedure. You should make this notification to this Licensing Authority prior to the expiry of your existing Section 34 permit. The necessary form with details of the fee will be made available on the Council's website.
- More than two gaming machines** – Pubs which want to offer more than two gaming machines will need to apply to the Licensing Authority for a licensed premises gaming machine permit. You should apply at least two months before the date on which your Section 34 permit is due to expire. Again the necessary form and the fee details will be made available on the Council's website.

Watch out for further information on the transitional arrangements together with application forms on the licensing pages of the Council's website. The forms will be put on the website as soon as they become available

Public Passenger Transport

Just a reminder that if you provide customers with transport, for example to take them home after a night out or for excursions from your pub/hotel, 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. An additional concern is that failure to hold the necessary licences may well invalidate your insurance cover for the vehicle. If you would like further information or advice on this issue please contact the Licensing Authority on 01271 388870.



The Future

We hope that you have found the information in this newsletter useful. We all have quite a bit to think about in the coming weeks and if we at the Council can be of any help with advice please do not hesitate to speak to us using the contact information in this document.

Finally, the Licensing Team take the opportunity to wish you and your staff a really good and, if you are in business, a prosperous spring and summer.

For further information please contact us at:

Licensing Team
North Devon District Council
Civic Centre, Barnstaple, Devon EX31 1EA

Telephone: 01271 388870
Email: licensing@northdevon.gov.uk
Website: www.northdevon.gov.uk