



LICENSING TRANSITION NEWS 2005

All Corporate Members (especially Premises Licence holders)

Issue 3: 17 May 2005

We are now half way through the 6 month transitional period to allow existing licence holders to convert their current licences to new permissions, and still we are seeing only minimal numbers of applications being made. The reasons for these are many and we have been highlighting them with Ministers and officials as part of ongoing efforts to postpone the 2nd Appointed Day and extend the transitional period to give operators more time to make their applications.

We have been having high level meetings with officials to explain the genuine problems licensees are encountering – last minute tabling of application forms, plan requirements etc, the cashflow implications of licences being renewed on the anniversary of grant and the last minute trebling of fees, lack of clarity on advertising requirements, the spurious rejection of applications by licensing authorities and the gold-plating of application requirements. We are working with other trade bodies, local authority representatives and other stakeholders to try to develop practical solutions to some of these common problems. With the General Election out of the way, we are hopeful that common sense will prevail.

In particular, we are seeking:

- early confirmation of 2nd Appointed Day, whenever it is to be, but preferably
- delay in 2nd Appointed Day and extension to the transitional period
- a 'slip rule' to allow local authorities to amend rather than reject applications
- the annual fee renewal date to be the anniversary of 2AD

Some helpful insights have been obtained from members who have submitted applications and the feedback they have provided through our **Licensing Transition Questionnaire**. This edition of **Transition News** provides an update and clarification on grey legal areas. It also includes our regular **Applications Progress Report** and we would urge members to fill this in and update us on their applications submitted to date so that we can feed this into our lobbying activity.

In the meantime, *ALMR* recommends that Members who are ready should not delay unnecessarily in submitting their applications.

HELP

- **Weblink.** Frequently Asked Questions at www.almr.org.uk/licensing.htm
- **Key contact** knicholls@almr.org.uk

NB/KN

Ealing

16 May 2005

Caveat: *While the Association makes every effort to ensure its information is accurate Members are reminded that this is not a substitute for the opinion of their professional advisers.*



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UPDATE

As we tentatively progress through the transition to the new licensing regime, and the first applications are made, we are beginning to see a number of grey legal areas emerging as well as clarification on other matters.

Much of the information set out below has come about directly through queries from members which have been researched with DCMS and legal advisers. We would remind all members that the office is available to respond to specific queries relating to applications or procedural matters. If there is something which you need to know which has not been covered by our briefings, or an issue arises which you need clarification on, please let us know.

- **What happens if I transfer my licence after the 1st Appointed Day?** In order to have a grandfather right then your licence or permission must have been in place and valid on the first appointed day ie 7 February. New licences granted after that date cannot be grandfathered, but providing the permission was in place on 7 February, any subsequent changes to it can also be grandfathered. The Government has confirmed that transfers to a licence made after the 1st Appointed Day would not jeopardise grandfather rights already applied for, equally, those taking over the licence would be able to apply for grandfather rights in their own right – both in terms of the premises licence and also for personal licences.
- **When do I need to pay the variation fee?** At the last minute, the Government introduced a new requirement for certain types of variation to pay an additional fee. There was some confusion as to whether the variation fee applies to alcohol businesses, but the Government has confirmed that this is not the case. The additional fee applies only during the transitional regime and only to variations which involve conditions relating to the sale of alcohol. So, for example, a pub making a variation application to provide public entertainment previously provided under the two in a bar rule or to extend the opening but not trading hours would not attract an additional fee. The fee would only become payable if you were looking to extend licensing hours or extend the area for on-sales, for example.
- **My application has been returned because I did not provide original certificates. What do I need to include?** You are not obliged to submit the original certificates with your application – in fact it would not be sensible to do so – but you must ensure that you submitted **certified copies**. If you have your original licence, then you can ask your licensing solicitor or a local notary to take and certify a copy of it. If you do not have your original, then you will need to approach the local magistrates or local authority for a certified copy. The certified copy need only accompany the original application.
- **My local authority is insisting I show storage areas on my plans, since this was a requirement under the 1964 Act. Is this correct?** The application and plans to accompany it need only meet the requirements of the 2003 Act – it is irrelevant what was required under previous legislation or indeed the requirements which the local authority set out for PELs. The detailed Regulations in this area are quite clear as to which areas should be shown:
 - *Boundaries (with neighbouring premises)*
 - *Entrances and exits to the premises and any other escape routes*
 - *Fixed structures (i.e. the bar)*
 - *Stages*
 - *Any stairs/lifts*
 - *Toilets*
 - *Fire safety equipment (extinguishers, blankets)*
 - *Kitchen*



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- o *Area on the premises where alcohol is **consumed** (usually marked by a red line on existing plans).*

This does not include storage areas. Similarly, local authorities cannot insist that plans are given a particular colour coding or include any other matters such as CCTV cameras etc.

- **My local authority is insisting on approving the content of the advert and notice of variation I will be displaying and has threatened to reject the application unless these contain full details. Can they do this?** The short answer is, no. Adverts and notices do not form part of the application and can only be displayed after the application has been submitted to the licensing authority. Providing the advert/notice includes all the information required by the Regulations, it cannot be challenged. This includes:
 - o *Statement of the relevant licensable activities*
 - o *Name of applicant and postal address of premises*
 - o *Postal address and website of licensing authority where full application may be viewed*
 - o *Closing date for representations and fact that they must be in writing*
 - o *That it is an offence to make a false statement in connection with an application*

Adverts and notices are only required for variation applications during transition and in this case you would need to include a brief description of the matters you are proposing to vary. This is where the local authority is trying to insist on more detail and in particular full disclosure of hours. They cannot insist upon this

- **The premises licence application form asks for details of the personal licence of the DPS. Do I need to have personal licence applications determined before submitting my premises licence applications?** No, you can submit your premises licence form before the personal licence is confirmed and known. The licensing authority cannot reject your premises licence application on this basis during transition.
- **Does a personal licence holder have to be on site at all times – my licensing authority is saying they will require this?** Government Guidance is quite clear that there is no requirement for either the DPS or a personal licence holder to be on site at all times when alcohol is to be sold. The licensing authority cannot require this nor should this be a reason for rejecting the application.

There is a requirement for all sales of alcohol to be authorised by a personal licence holder, but the latest Government legal advice is that this does not mean each sale must be directly supervised by a personal licence holder on site or individually authorised. You must, however, be able to demonstrate that you have specifically authorised an individual to make sales. This may be done in an oral or written statement as part of an individual's contract of employment, induction or in a staff handbook. It is also recommended that there is a clear record of who is able to authorise sales and that there are sensible monitoring arrangements in place.

A few more general points have emerged during the transitional period. There is clear evidence of opportunistic enforcement by responsible authorities of related regulatory regimes. For example, several members have had separate requests for fire safety and noise risk assessments to be supplied to the relevant authorities. The businesses are required to have both of these under separate legislation but are not obliged to present them as part of their applications. The timing of the requests appears to be more than coincidental and it is clear that the authorities will use the information to inform their comments on the application or to challenge the application if the risk assessment is not available. Members should ensure that all their risk assessments are up to date, but may wish to hold off submitting them until the licensing application has gone in.



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PROGRESS REPORT

- This is a rolling survey and will provide a snapshot of applications made to date and any key issues arising, as well as a means of collating general concerns.
- We are only seeking responses from those companies seeking to hold the premises licence.
- Please only provide information on applications made to date and already submitted to licensing authorities.
- If you have not yet made any applications, please submit a zero return

Name of company:

No of premises licences - managed:	- leased :
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Date of this report:

Number of applications submitted in the following categories:

Rateable value bands	A	B	C	D	E	Total
Total number of premises licence applications submitted to date						
How many of these are seeking to <u>vary</u> as well as convert existing permissions						
How many of these are seeking to extend trading by up to 2 hours per day						
How many of these are seeking to extend trading by more than 2 hours per day						
How many of your applications have attracted objections						

Please rate each of the following indicating in each case how satisfied you are (1 = very unhappy, 5 = very pleased):

The quality of information you are receiving from your licensing authority/ies	
Speed of basic application processes within licensing authority/ies	
Handling by licensing authority/ies of queries & concerns	

Do you have any specific concerns about the way in which reform is being implemented and applications handled? – especially if this overall report is based on many local authorities.

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(please print this page, complete and fax to ALMR on 020 8579 7579)