



## Licensing Bulletin August 2010

### Licensing Bulletin

Welcome to our latest Licensing Bulletin. In this issue we comment on transferring premises licences, regulation of knife dealers, alcohol labelling and Sunday morning On sales in Edinburgh. If you would like to discuss any of the issues covered in this bulletin, please get in touch with a member of our team.

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#### Transferring Premises Licenses

Under the 2005 Act, applications for transfer are made by the *existing* or *current* Premises Licence holder. The exceptions to this are where:

- the Premises Licence holder has died,
- the Premises Licence holder has become incapable or insolvent,
- the holding company or partnership is dissolved,
- the business is to be transferred to another person.

In these situations, the application by a third party (or prescribed person) must be made within **28 days** of the occurrence of one of the above events – this is not a lot of time.

#### The Process

Every application for transfer must be accompanied by the Premises Licence. If, for some reason, the Premises Licence cannot be produced, a statement of the reasons for failing to produce it must be given. We are still waiting for Premises Licences to come in or are seeking corrected Premises Licences in relation to applications for transfer that we are involved in.

Once the Board receive the application for transfer under Section 33 or 34 of the 2005 Act, they give notice of the application to the Chief Constable who then has 21 days to report on any relevant or foreign offences. We are finding that the Chief Constable is also reporting on applications that they consider have been submitted erroneously. The Chief Constable is duty bound to provide a “notice” to the Board. If the police consider that the application be refused due to consideration of the crime prevention objective, the Board have to hold a hearing. If for any reason there is an issue with the application for transfer and it is refused, the Premises Licence “ceases to have effect”.

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A challenge is yet to be taken to the courts to ask for a judgement on what "ceases to have effect" really means. Is the Premises Licence in "limbo" as a result of the refused application? Could it be revived by a fresh competent application? Or, is it just as it sounds - that the Premises Licence is lost. If you need any assistance with transfers, or if you have any queries, please call our team for assistance.

### What else is changing?

#### Licensing and regulation of knife dealers

Part 27 A of the Civic Government (Scotland) Act 1982 regulates the licensing of knife dealers. Under these new regulations, you will need to have a knife dealer's licence if you carry on business as a dealer in:

- knives (other than folding pocket knives with a blade of less than 3.5 inches or knives designed for domestic use),
- daggers (other than kirpans, skean dhus where the blade does not exceed 3.5 inches),
- swords,
- any other article which is has a blade or is sharply pointed.

An application for a knife dealer's licence is to be made to the relevant licensing authority. Mandatory conditions will be attached to these licences such as keeping records of transactions with customers, carrying out identity checks, displays and notices.

#### Alcohol labelling

In February the Scottish Government announced that, together with other devolved administrations and the Department for Health, it was launching a consultation on alcohol labelling. The view from the Government appears to be that the industry was not sticking to the voluntary agreement reached in 2007 and if compliance with the current voluntary code did not improve, Nicola Sturgeon would look at mandatory labelling.

What should we see on labels at the moment?

- information on the number of units,
- a message about responsible drinking,
- a logo and link for Drinkaware,
- the recommended NHS limits,
- advice on drinking when pregnant.

The consultation was to run until 9 May 2010. We haven't seen responses as yet.

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### Sunday morning On Sales in Edinburgh

Despite numerous applications for variation seeking earlier hours on a Sunday morning which we undertook for various clients, the Licensing Board in Edinburgh refused On Sales before 12:30pm on a Sunday. It is possible that the Licensing Board will seek review of premises licences where there is an off sales facility and tables and chairs consent. Councillor Marjorie Thomas said:

*"The board has discussed this at great length and we are unanimous in this view. We have taken the views of the licensing forum and the board found that we need to give the community some breathing space.*

*There is also the whole issue of public health and alcohol. To increase licensing hours at this time is not acceptable."*

Early hours on a Sunday will only be considered where there are "exceptional circumstances" – exceptional circumstances being something like a Coronation!

**“ Despite numerous applications for variation seeking earlier hours on a Sunday morning, the Licensing Board in Edinburgh refused On Sales before 12:30pm on a Sunday. ”**

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## Licensing Industry Seminar

### The Licensing (Scotland) Act 2005 12 months on - your questions answered Thursday 16th September 2010, Edinburgh

Lindsays are hosting a seminar which will provide you with an overview of how the Licensing (Scotland) Act 2005 has affected the industry over the past 12 months.

Caroline Loudon and John Loudon from Lindsays and Patrick Browne, the Chief Executive of the Scottish Beer and Pub Association will present a review of the changes, discuss how the new Act has operated in practice and let you know about the new legislation that is coming into force so you can ensure you plan for future changes.

For more information and to register please visit:  
[www.lindsays.co.uk/news-and-features/events/](http://www.lindsays.co.uk/news-and-features/events/)

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If you would like to discuss any issue arising out of the topics mentioned above or you would like to be updated on the progress of the Criminal Justice and Licensing (Scotland) Bill or the Alcohol Etc. (Scotland) Bill - please contact our experienced and knowledgeable team.

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