

AFTER HOURS

Welcome

Welcome to the autumn issue of **After Hours**, our bulletin in which we aim to keep you informed of current issues and news in licensing and leisure.

Burges Salmon acts for clients on a national basis in the leisure, entertainment and gaming sectors. The team deals with all the licensing requirements of the retail and licensed trade, and also advises clients in the gaming and entertainment sectors, including lottery and gaming advice and public entertainment issues. Recent months have seen many notable successes following heavily-contested applications, as well as landmark decisions where licensing authorities have derogated from their own stress or cumulative impact policies. The team has also been at the forefront of negotiating on behalf of its clients with DCMS and the Gambling Commission on the implementation of the Gambling Act.

If you would like others in your organisation to be added to this regular briefing please email chris.pritchett@burges-salmon.com

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Pyramid or chain-gift schemes



In pubs and workplaces across the land, it is common to hear of friends and colleagues being asked to join up to the latest surefire money-making scheme. All it takes is an up-front payment and a willingness to 'recruit' a minimum number of new participants, a small price to pay in comparison to the riches supposedly on offer. As more players are recruited to the scheme, those further up the 'pyramid' may eventually receive substantial sums of money.

Given the amounts of money at stake, schemes such as these have been popular for some time, and whilst there are unquestionably those who may benefit in the early stages of the scheme, many more are left out of pocket when the structure inevitably collapses as the supply of new 'recruits' is exhausted.

Recognising the potential for players to be exploited by the organisers of these schemes, and also the risk of people being pressured into joining up by someone desperate to make their quota, the Government criminalised certain connected activities as miscellaneous offences in the Gambling Act 2005.

Section 43 of the Act sets out that it is an offence to:

- a) invite another to join a chain-gift scheme, or
- b) knowingly participate in the promotion, administration or management of a chain-gift scheme.

The maximum penalties are 51 weeks imprisonment and/or a fine up to level 5 of the standard scale (£5000) for either offence, although varying levels of culpability between organiser and an unaware participant would be likely to be reflected in the actual sentence handed down.

Employers need to issue careful warnings to staff in relation to chain-gift schemes, which may be more widespread than they realise. Furthermore, there is a risk that, if they are aware of an employee who has made a substantial profit from illegally organising, managing or promoting a scheme, then they may have to make a notification to SOCA under the Proceeds of Crime Act 2002. In any case, there is a need for vigilance.

Fetes, festivals and fairs


When one pictures a summer festival, it's all too easy to conjure up an image of unwashed hordes, mud, crippling congestion and overflowing toilets. Aside from the media feeding frenzy around Worthy Farm in June, the reality of the modern music or arts festival is very different. Recent years have seen an explosion of smaller, more family-orientated events, showcasing acoustic or roots music, locally-produced organic food and drink and local arts and crafts. Attendance can range from 500 to around 5000 people, and as long-standing music festivals become increasingly commercialised, people are turning to smaller, more intimate events for their summer fun.

Organisers of smaller festivals are always on the lookout for suitable venues for their events. Any large, relatively flat and well-drained parcel of land that has reasonable road connections could be a potential venue, and the fee for hiring the land can be substantial. Even greater potential rewards await a landowner who chooses to organise their own festival, but there are clearly risks that come with this and such a venture should not be undertaken lightly.

There are quite often problems with securing a licence for an event, particularly if it is a new festival. These issues may include safety, noise, traffic congestion and local opposition, but with a well-structured approach to organisation and a willingness to work with the relevant authorities, these problems are not insurmountable. Also, if an event has an attendance of fewer than 500 people, the procedure for getting a licence is very straightforward, as only police can object to its grant.

Burges Salmon have extensive experience in organising outdoor events both large and small, from negotiating the right of organisers to occupy land to securing the all important licences. Should you have any interest in using land (or allowing land to be used) for any sort of show, fair or festival, please contact Chris Pritchett on 0117 902 6684 or email chris.pritchett@burges-salmon.com

(A version of this article first appeared in Burges Salmon's Agricultural Law Quarterly).



“...as long-standing music festivals become increasingly commercialised, people are turning to smaller, more intimate events for their summer fun.”

PPL/PRS update

Failure to obtain the relevant licences may result in a civil action for copyright infringement when playing sound recordings in public. A Performing Rights Society (PRS) licence is required to cover copyright in the musical and lyrical composition of music and a Phonographic Performance Limited (PPL) licence is also required to cover the sound recordings itself.

“Playing in public” means playing for any purpose other than a purely domestic one and includes not only playing in pubs, restaurants and shops but also offices and factories. It is this latter group which is being targeted now, particularly where the potential licence fees are substantial.

As an example, Kwik Fit are currently being

pursued for substantial damages in the Scottish Courts by PRS on account of employees at service centres routinely using personal radios at work in such a way as to make the copyright music audible to colleagues and customers.

This case highlights the potential importance of having the correct licences in place whenever music is played in public, but also shows the increasingly aggressive approach taken by the royalty collection agencies, possibly under pressure from members seeing a decline in traditional music consumption. We would advise all businesses to ensure they have carried out audits to check on music use, and then take steps to check whether these licences are needed.

ProDub licences

The Professional Dubbing (ProDub) licence (managed by MCPS/PRS) is something that some venue operators should be aware of if individuals they hire or employ use laptops to broadcast copyrighted music. This is of relevance to DJs, karaoke jockeys, fitness instructors and other similar performers.

The licence allows an individual to copy music they own onto various formats and devices, such as from

their CDs to their laptop, for the purpose of using that device or format to undertake professional or semi-professional performances.

Venues will be encouraged to ensure that the relevant individuals they hire or employ hold a ProDub licence and will be asked to report those who do not. The cost of a ProDub licence is expected to be approximately £250 for the first year.

Minor variations

A consultation closed 1 September which could see the costs of making minor variations to a licence fall to £73.

Under the Department for Media, Culture and Sport's proposals, a new, simplified process for making minor variations to premises licences and club premises certificates has been suggested.

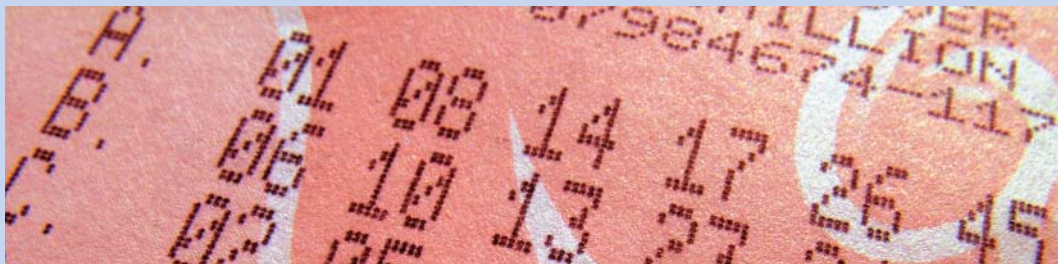
Currently, all variations incur a fee based on rateable value of the premises as well as other costs such as advertisements in local papers. Under the plans, small variations that do not adversely have an impact on the licensing objectives will be subject to a simplified "minor variation" process with a fee of £73.

Minor variations are likely to fall into four categories including: minor changes to the structure or layout of the premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and

the addition of certain licensable activities.

Predictably, some concerns have been voiced. The actual determination of what is "minor" is proposed to be at the discretion of each authority and there is some concern this will lead to discrepancies in treatment. There is also concern that the term "minor" will be construed too narrowly. For example, variations which extend the licence period; substantially vary the premises; or authorise the sale of alcohol or increase the amount of time in any day during which alcohol may be sold are all excluded from the minor variations process. There is also no right of appeal against the decision of a licensing officer to exclude an application from the 'minor variation' procedure, but as a decision must be taken within 10 days, an applicant would not have too long to wait before re-submitting their application under the full procedure.

Society lotteries and limited companies



Although lotteries are generally illegal under the Gambling Act 2005, one of the permitted types of lottery is a 'society lottery'. In these cases, it is possible for non-profit making organisations to run lotteries to raise money for non-commercial causes.

Complications can arise where organisations wish to run charitable lotteries but are not registered charities or 'non-commercial societies'. Special cases are made for commercial trading arms of registered charities which pass all of their income

to the parent charity, but it is also possible to establish a separate limited company as a vehicle for lotteries which are not connected to a charity. Careful thought needs to be given to the memorandum and articles of the company to clearly state that the aims of the company are to raise funds for specified causes or charities, and to provide for distribution of the funds to charities at the dissolution of the company.

For further information please contact chris.pritchett@burges-salmon.com

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Impact of Licensing Act 2003

The Department for Culture, Media and Sport (DCMS) has published its first review of the Licensing Act 2003. The review reveals a mixed picture. While the Act's introduction has not led to the widespread problems some feared, the government acknowledges that alcohol related violence has increased in the early hours of the morning and some communities have seen a rise in disorder.

DCMS found that a number of positive trends have

emerged from the introduction of the new regime including the fact that the system is more democratically accountable with residents better able to influence licensing decisions, while the single, integrated scheme has resulted in a considerable reduction in red tape. The government's main conclusion is that people are using the freedoms provided by the Act but are not always using the considerable powers in the Act to tackle problems.

Pubs, communities and redevelopment



The UK's planning system is unlikely to be a popular topic of many pub conversations, unless of course the pub is at the heart of a community confronting a major development proposal such as a new airport, or even perhaps the possibility of the pub itself being demolished to make way for new homes. In those scenarios, it is amazing how many ardent objectors to the development can suddenly be found.

To the horror of such objectors, the development of new airports may become easier under proposals currently being considered by parliament. On the other hand, the loss of pubs from communities does not appear to be receiving much attention from Ministers and MPs, despite the admirable work of CAMRA in establishing the Community Pubs Foundation (see www.communitypubs.org) to raise awareness and grapple with this important issue. According to CAMRA's research in 2005, 26 pubs were being permanently closed each month; earlier this year it reported that the figure has increased to 57 each month. Many people find fault with the planning system,

accusing it of being slow, bureaucratic and inefficient in the way it reaches its decisions. It is. Nonetheless, it is essential that the decision-makers consider the effect and impact of development proposals on everybody affected by them, whether as developer, user or an affected neighbour.

In recent years, the planning system has been faced with many proposals to either convert pubs into flats or sometimes to demolish them and replace them with new homes. Although some local authorities have policies which support the retention of pubs as a community amenity, a high need for new homes in an area may mean that such policies have to give way to that greater need. Another issue which often arises is that if a pub has closed because it cannot operate profitably as a pub, then planning permission may not be needed for it to be demolished and some developers use this to their advantage by demolishing the pub before making a planning application to put new homes on the site. An argument that a pub is a valuable local amenity cannot succeed if it has already been demolished!

The Community Pubs Foundation website (address above) contains some useful guidance on how to oppose proposals for the redevelopment of pubs to other uses. However, the planning system will ultimately be unable to prevent the closure of an unprofitable business, so the only certain way of protecting communities from the loss of these valuable assets is to make frequent use of them. Cheers!

For further information please contact Jim Ryan at jim.ryan@burges-salmon.com

Minimum price bill

The second reading of the Alcohol Sales (Regulation of Prices and Promotion) private members' bill took place in the House of Commons on 17 October.

During the first reading of the bill in June, plans were outlined to regulate prices per unit, regulate

point of sale promotions, advertising and labelling and establish an industry council to administer the regulation of prices and promotions. The bill was unveiled to trade leaders at 10 Downing Street on 1 October.

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