

PopplestonAllen

 Institute of Licensing
25th
National Training Conference 2021

Licensable Activities – And Where to Find Them





Andy Grimsey – a.grimsey@popall.co.uk; mobile 07976 844093
 Jonathan Smith – j.smith@popall.co.uk; mobile 07768 845695






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What we will cover

- Why the location of licensable activities is important.
- Sale/supply of alcohol.
- Provision of regulated entertainment.
- Provision of late night refreshment.
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 - Indoors or Outdoors?
 - Where is provision if delivery outdoors? or
 - If alcohol was it "provided" or supplied indoors for delivery?














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Why is the location of licensable activities important?

- The carrying on of an unauthorised licensable activity is an offence.
 - Section 136 – on conviction, 6 months imprisonment or unlimited fine, or both.
- Other enforcement – review of licence or CPC (if one exists).
- Clarity and transparency.
 - Licence applications involve scrutiny by public and authorities.
 - Licence/CPC is a public document – should be legible
 - Confusion – >enforcement >costs/loss of trade for operator/potential civil claim against Licensing Authority.

Only the lawyers benefit from uncertainty!


- Regulatory control – how to calculate whether statutory limits are exceeded e.g., 500 audience or 499 for a TEN?
- Off-sales?
- Outside bars?
- Powers of entry?
- Recorded music in red line for Live Music Act?

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Sale/Supply of Alcohol

- Contract and appropriation at same location (eg., the bar) - simples.
- If contract for sale of alcohol is different to where the alcohol is appropriated then
 - Section 190 "the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract".
- Guidance – paragraphs 3.8 to 3.10 – mobile, remote, internet and other delivery sales.
- "The place where it [the alcohol] is identified and specifically set apart for delivery to the purchaser" is the location that needs to be licensed.
- Online, telephone or mail order.
 - The warehouse needs to be licensed.
- The hours permitted should cover all those times/days when alcohol might be picked/specifically selected pursuant to an order. This is the "appropriation".




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Sale / Supply of Alcohol

Where does the licensable activity take place?

- Walter / waitress service from bar to tables in beer garden, with remote payment at table?
- Shot girls/staff carrying drinks trays for purchase with payment:
 - At the bar?
 - Remote device?
 - Important for under 18's taking drinks to tables
- Craft beer shop with online presence, with alcohol both for sale at the shop and delivered from the warehouse;
- As above, but alcohol stored and delivered from an Amazon fulfilment centre;
- PR company for large multi-national hosts private marketing event for invited guests only. Alcohol is free to guests, but paid for by PR company on sale or return basis;
- Party buses/Limousines
- Alcohol inhalation "cloud bars"?



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Regulated Entertainment

- "Provision" of regulated entertainment – where does the "provision" of regulated entertainment take place?
- LA 2003 Schedule 1 (summarised)–
 - 1(3) The premises on which the entertainment is provided are made available for the purposes[s] of enabling the entertainment... to take place.
 - 2(1A)
 - takes place in the presence of an audience, and
 - the entertainment is provided for the purpose[s] of entertaining that audience.
- Definition of "premises" Section 193 LA2003 "any place and includes a vehicle, vessel or movable structure"
- Notable geographical exceptions
 - activities in places of public religious worship
 - vehicles in motion (carnival floats)
 - E.g., Local Authority, Hospital or School premises between 0800-2300 (any entertainment)
- Effect of de-regulation between 2012 - 2015



Provided for the purpose...

- The premises themselves must be provided for the purpose of enabling entertainment
 - Pub function room or nightclub
 - Illegal rave on land without consent of landowner?
- What about an "unwanted" audience?
- Does this affect statutory limits e.g., 500 audience etc.
- Footnote 33, page 127 of the Guidance
 - In some circumstances, such as un-ticketed live music events, a degree of judgment may be required as to whether persons are part of an audience. Factors to consider could include whether a person is within the perimeter of the premises, the audible range of the performance, and their visibility of the entertainment. In order to meet the definition of an entertainment activity in the 2003 Act, the activity must take place in the presence of an audience and be provided for the purpose, or for purposes which include the purpose of, entertaining that audience



Late Night Refreshment

- "Supply" not "sale"
- Kebab vans etc., where parked?
- Schedule 2(i)(a) – supplies on or from any premises whether for consumption on or off the premises.
- What does 1(b) add?
- Designated area or exemption – NONE?
- Hotels/caravan parks exempt – if guests