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drinks, hospitality & leisure

**FREETHS**



## 10 Practical tips to safeguard your premises licence

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As well as being essential to running your business, holding a Premises Licence considerably increases the value of a building - so clearly it should be rigorously protected. Measures to protect your Premises Licence can include simple administrative steps to safeguard against enforcement action. However they may also include formal applications to provide protection against events such as insolvency.

### 1. Premises Licence & Premises Licence Summary

Do make sure you have either a certified copy or the original licence retained on site. You are also required to put on display either the original licence summary or a certified copy of it. The summary must be displayed in a position where it can easily be seen by members of the public. It is a statutory requirement that you ensure these documents are in place at all times.

### 2. Know your conditions

Make sure your managers are well aware of any conditions placed on the licence. Enforcement Officers will check that your premises are compliant with each and every condition. If you are found to be in breach of a licence condition you are liable on conviction to an unlimited fine.

For example, if a condition on your licence reads: *"All staff shall receive documented induction training (at least every three months) relating to the sale of alcohol"* you need to make sure all of your training records are complete and fully up to date.

### 3. Do you have a DPS?

It is a condition on every licence that: *No supply may be made under the Premises Licence - (a) at a time when there is no Designated Premises Supervisor or (b) at a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.*

So you need to make sure that your licence has the correct DPS appointed. If your manager leaves and they are named on the licence as the DPS – ensure that an application is submitted immediately to appoint a replacement.

No DPS = no sales of alcohol.

### 4. Applying for a new Premises Licence

If you are applying for a new Premises Licence it will be necessary to display notice of the application in the local newspaper within 10 working days of submitting your application.

You must ensure that the notice goes in a newspaper circulating in the area. Do check with the licensing authority you have chosen the correct newspaper.

Notice of the application must also be displayed on site. This will be checked by the enforcement officer so it is advisable to photograph the notices in situ, just in case!

## 5. Are all of your alcohol sales lawful?

It is also a condition on your licence that “every sale of alcohol must be made or authorised by a personal licence holder”.

The DPS or another personal licence holder can authorise other members of staff to sell alcohol either orally in writing. In order to prove that the necessary authorisation has been given, we advise our clients to use a signed authorisation sheet (an example is included in this guide). In the event that you are asked to prove that authorisation has been given to particular members of staff, this document will serve as part of your due diligence defence.

## 6. Is the plan of your premises accurate?

The plan forms part of the Premises Licence so check that your plan accurately reflects your current layout. If you recently acquired premises and you are proposing to carry out a substantial refurbishment you may need to apply to vary the licence seeking approval for your new layout plan.

## 7. Be prepared for a review

If you receive an application to review your licence, this can pose a serious risk to your business. At a review hearing the licensing committee have a wide discretion; at best they could merely dismiss the review application. However they do have the power to impose additional conditions on your licence, change your hours of operation or remove a licensable activity. The worst case scenario would be they revoke your licence altogether.

You will have a 28 day consultation period ahead of the review hearing. You should use this time wisely to prepare. Dependent upon who has made the application you may have a significant amount of work to do. For example if the review is sought by the Environmental Health Officer (EHO) as a result of noise complaints or monitoring you may need to instruct your own acoustic expert to counter allegations.

We recently represented a client at a review hearing where the EHO had sought revocation of the licence. In the absence of any sound recording the EHO relied on local residents' complaints and his own subjective opinion on noise levels. Our client was greatly assisted by an acoustic consultant, whose alternative professional opinion the Licensing Committee found persuasive. So much so, that we were able to ensure the Committee rejected the request for revocation in favour of our very own carefully and much more favourably drafted conditions. We even went as far as removing conditions previously put in place at the request of the EHO. So a review application can have favourable consequences for you and your business as long as you go prepared.

## 8. What to do if the Premises Licence holder becomes insolvent

The Premises Licence will lapse immediately on the insolvency of the Premises Licence holder. However all is not lost as the Licensing Act 2003 allows a window of opportunity for 28 days in which two alternative applications can be submitted to reinstate the licence.

**Interim Authority** – the first option is to submit an interim authority notice, which must be done by the freeholder, leaseholder or the relevant insolvency practitioner. The application must also be served on the police. Once this application is granted it protects the licence for a further three months. But is important to monitor this three month clock, because within this period a transfer application must be submitted, otherwise the licence will lapse once again, with no further reinstatement.

**Transfer** – alternatively if a new operator has been found for the site a transfer application can be made. As with an interim authority application it must be made within 28 days of the insolvency with the application also served on the police.

If neither of these courses of action is taken within 28 days the licence cannot be reinstated and will be lost permanently.

## 9. Live music

Although your licence may not permit regulated entertainment, there is a range of live music that can take place without a licence under the Licensing Act 2003. The introduction of the Live Music Act 2012 means that you no longer need a special licence to stage a live music performance if:

- It takes place between 8am and 11pm
- It takes place at a licensed premises or workplace
- The audience is no more than 200 people
- You also don't need a licence to put on unamplified live music in any place between the same hours.

## 10. Know what you are getting

If you are acquiring a business, on the assumption there is a suitable Premises Licence in place, make sure you do your homework and check the current licence. You need to confirm what it allows and whether it is suitable for your proposed style of operation.

In particular:

- Check the previous Premises Licence Holder didn't become insolvent - see 8 above.
- Check that the annual fee has been paid, as non-payment of the fee can result in suspension of the licence. If your predecessor didn't make the last payment you will need to do so.
- Make sure you have a copy of the current licence and the hours and types of licensable activities permitted work for you.
- Review the licence conditions – see 2 above. You need to be aware of the restrictions in place and appreciate how these may impact on your business.

## Contact

For further advice please call:



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**Sample authorisation sheet for sale of alcohol**

Premises name: .....

Premises address: .....

As the Designated Premises Supervisor under the Licensing Act 2003 for the above premises I hereby delegate my authority and grant permission to any employee of xxxxxx who may work from time to time at the above premises (and in particular those named below) to sell alcohol by retail at the premises.

I also authorise those employees who are over the age of 18 to be a "responsible person" under Section 153 of the Licensing Act 2003 to allow any employee of XXXXX aged under 18 to make on these premises any sale of alcohol provided that any such sale is specifically approved by that responsible person.

Employee Name	Employee signature

Dated .....

.....  
Signature of Designated Premises Supervisor