

Hotels and Leisure

June 2005

Licensing deadline may lead to backlog- Are you prepared?

Licensees are realising that the new legislation is proving to be administratively difficult and expensive. All pubs, clubs, bars, restaurants, theatres, cinemas and late night takeaways have until the 6th August to apply to the Local Authority to transfer their existing licences. This process has to be carried out whether or not they intend to vary their opening hours or apply for additional hours.

The initial expense is the cost of obtaining appropriate plans drawn to the 1:100 scale as required by the Licensing Act 2003 (Transitional Provisions) Order 2005.

Thought then needs to be given for those premises, particularly pubs, that are in the habit of obtaining special orders of exemption to extend their hours for special events such as weddings and birthday parties etc.

There are a limited number of temporary event notices that premises are able to use. For some this will be sufficient to get around the hours problem.

The other important issue that needs to be considered, where a premises wish to vary their hours, is the drafting of an operating schedule. The variation form is lengthy and the licensee must explain how the licensing objectives of prevention of crime, public nuisance, the protection of children and public safety are going to be addressed. The Licensing Authority are only able to apply conditions that are consistent with the operating schedule unless they grant the licence after hearing representations, in which case conditions must promote the licensing objectives set out above. Because at

the moment there have been no such hearings, it is not clear how the legislation under the Licensing Act 2003 is going to be interpreted.

The Licensing Authority's position is that under the 2003 Act they must grant any application for a premises licence, or application to vary such licence, unless it receives any objections or 'representations'.

If representations are made then it will be necessary for the procedures for an oral hearing to be triggered unless the Licensing Authority, the applicant and the people making the representations all agree that a hearing is unnecessary. If this assessment and any hearing is not finalised within a 2 month period from the submission of the application to vary, it will be deemed refused at the end of that period.

It is understood that the second appointed date is to be in November 2005. This will be the date when the Licensing Act 1964 ceases to have effect and all the new legislation will be in place. At this stage it is thought that there will be many applications to vary that will still be outstanding. Keep watching this space!

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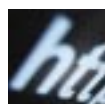
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Tax-efficient Wills for Business People

Although business property relief for many in the Hotels and Leisure sector remained advantageously high at 100% (for business interests) and 50% (for land and buildings used for business purposes) in the last budget, the inheritance tax limit increased only slightly and now stands at £275,000.

Many of our clients are unsure as to how to structure their wills to take optimum advantage. Our current thinking is that a discretionary trust of the tax free sum (benefiting any spouse and children) plus a separate trust of any business property, with the rest of the estate then passing to any spouse on a flexible life-interest trust gives maximum flexibility.

The discretionary trust achieves an inheritance tax saving of £110,000, the trust of the business property takes advantage

of the business reliefs available (so the whole business could pass down a generation free of tax) and the flexible life interest gives further scope for the survivor to re-arrange their assets for additional tax savings later.

Jonathan Hall is a solicitor in Foot Anstey's private client department and joins the leisure team to specifically advise on wills and tax planning following business sales and purchases.

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New proposals for park home site licensing

Those of our readers who are involved with park homes will probably know that the principal statute which governs their position is the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). With many developments, both social and economic, in the intervening 45 year period since the inception of the 1960 Act, it is not surprising to note it needs updating. The Office of the Deputy Prime Minister ('ODPM') have identified that not only are there gaps in the current legislation but that minimum standards on sites need to be raised and that sites need to be monitored more effectively. They have therefore produced a consultation paper for park home site licensing, identifying nine areas of proposed changes.

The key proposals are as follows:-
On the grant of a licence it is intended that the Local Authority shall be obliged to attach conditions to it which would be "desirable in the circumstances" and based on the "Model Standards" which were set in 1989.

When a site changes hands it is intended that there should be a clear legal obligation upon the seller and buyer to notify the Local Authority of the transfer of the site at the time of exchange of contracts. It is proposed that a failure to do so would constitute a criminal offence with a fine of up to £5,000 for both the seller and the buyer. The sting in the tail relating to the £5,000 penalty is that a purchaser

would potentially have to pay this amount monthly until the situation had been rectified satisfactorily. It is worth remembering that a person who owns/manages a park home site without a site licence will continue to commit an offence in accordance with the 1960 Act. The Consultation Paper envisages that the Local Authority would inspect each transferred site within 28 days of being notified.

It is apparent from the proposals that the Local Authority will take a far greater role in the managing of park homes sites and this is reflected in the drafts relating to the monitoring and enforcement of licensing conditions. The ODPM suggestions would require Local Authorities to make regular site inspections to monitor compliance with site licence conditions and a Local Authority would be under a duty to take enforcement action with the costs of enforcement proceedings being recovered from the site owner.

The next significant proposal is that site owners would be required to recognise residents' associations, who should be consulted before park rules and pitch fees would be amended. To that end there would need to be a fairly detailed dispute resolution procedure with a duty on the Local Authority to consult the association before the imposition of amended licence conditions.

The issue of "residents' empowerment" (a phrase used by the ODPM) is

that in the longer term residents' associations would have far greater powers than simply being consulted on matters of general administration. The Consultation Paper refers to the possibility of the right to inspect accounts which are relevant to support pitch fee increases above the retail prices index, the right to enforce licensing conditions through an official tribunal, the right to install temporary management where there is no prospect of site improvement and the right to pursue collective purchase of the site.

Park home site owners will clearly wish to make representations on the Consultation Paper in respect of those proposals. A research paper entitled "Report on the Economics of the Park Homes Industry" (commissioned in 2002) indicates that 250,000 people at least are living on an excess of 2,000 sites in England and Wales. Given the size of the industry and the number of people involved, the Government is keen to pursue a lengthy process of public consultation. We are expecting a publication of the summary of the responses to the consultation results later this year and it is likely that this will form the subject of a further article.

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Immigration and work permits

Hotels and restaurants in the South West are increasingly employing workers from overseas to fill gaps in the resident labour market, so employers should be aware of the relevant requirements of the Immigration Rules.

It is a criminal offence to employ an overseas national subject to immigration control who is not allowed to work but, if the employer has checked and photocopied the employee's documents, this will be a defence to any accusation of illegal employment.

The Government has published lists of the various documents an employer should ask a new employee to provide as evidence that he or she is allowed to work legally in the UK.

The employer should request sight of the listed documents from all new employees so as not to be accused of racial discrimination.

Overseas workers who do not require work permits in order to work are nationals from the member states of the EEA and those who have an immigration status which does not prohibit or restrict their employment.

Work permits are issued for a specific job with a named employer and an employee with an existing work permit will need a new work permit if he switches to a new job with his existing or new employer.

Overseas nationals who have a work permit will also need permission to live and work in the UK on this basis.

Employees of those countries which joined the EEA in May 2004 (apart from those from Malta and Cyprus) are allowed to come to the UK to work but unless they have already worked here legally for at least twelve months they will need to apply for a Registration Certificate, authorising them to work, within one month of taking up employment. After twelve months legal employment they will no longer be required to register.

Employers who do not check whether their employees are authorised to work under the Worker Registration Scheme will also commit a criminal offence.

Work permits for employees in the "hospitality" sector, which includes hotels and restaurants, are usually only issued to skilled workers with the required qualifications and experience, where the employer can prove that it has searched the resident labour force and found no-one suitable to do the job.

The Sectors Based Work Permit Scheme has been introduced in the past few years to allow workers from outside the EEA to take short-term unskilled jobs. It is quota-based, the employees are only allowed to come to the UK for twelve months, and it does not lead to settlement.

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Latest News

Foot Anstey merged with Somerset based Alms & Young on 1 May 2005.

Alms & Young operates from offices in Taunton and Bridgwater. The merger enables the combined firm to offer a full range of services in Somerset with a particular benefit to Alms & Young clients who are now able to access the expertise that Foot Anstey already provides to businesses both in and out of the region. The combined firm will employ 270 people across four offices in the South West.

(front l-r) Nick Sutcliffe (Senior Partner – Alms & Young), Neil Scott (Managing Partner – Alms & Young), (back l-r) Chris Thorne (Partner – Alms & Young), Mark Lewis (Partner – Foot Anstey), Jane Lister (Managing Partner – Foot Anstey), Andrew Richards (Partner – Francis Clark) & Simon Gregory (Partner – Foot Anstey).



Could your Domain Name be at Risk?

A disturbing new type of fraud has arisen in the domain name arena which highlights the need to review policy on a regular basis.

When domain names were first designated, some sharp individuals and companies registered names such as www.harrods.com in the belief that the owner of the name would pay a small fortune to own the domain name and stop others using it. The courts ruled that this type of cyber-squatting was a breach of a company's trade mark and such domain names should be transferred to their rightful owner. Subsequently a standard procedure was introduced by the various domain name registrars to ensure that the legitimate owners could retrieve their names where others were attempting to cyber-squat. We thought that was the end of serious cyber-squatting.

While both the possibility of using the courts and/or the domain name registrars' procedure (known as the UDR) remain, an unpleasant new way of extracting money by the use of domain names has appeared. This involves unscrupulous dealers registering names that are the same or similar to genuine names. To take an example, if an hotel is called St Hilda's and owns www.sthilda.co.uk and www.sthildas.co.uk, the squatters register www.sthildashotel.co.uk. This new site is then pointed either to other, often competitive, hotel sites covering a similar area or, alternatively, pornography sites.

If the site points people to other competitive sites then the site owner will try and earn money for diverting the traffic; the latter tactic is used in order to cause the maximum annoyance.

When a complaint is made to the cyber-squatter, spurious arguments about their entitlement to use the name are raised. It is also very difficult to get to ascertain who the actual owner of the site is as the registered owner might

well be in Australia, the correspondence address is in America and the hosting is in Europe.



There is, of course, the UDR and, in the example above, there would probably be no difficulty in recovering the name. However, there is a catch. The procedure under the UDR is that there is a period, after the complaint has been filed, when the parties should engage in mediation. There is, however, no penalty for not engaging in mediation and in the situation we are describing, it is likely that the cyber-squatter would refuse to participate. That leaves the rightful owner with no alternative but to pay the fee of £750, in the case of disputes arising in relation to .co.uk domain names, for a formal decision which is the only route available that gives the right to the transfer of the name other than proceeding through the courts. If the domain name is a name with respect to a .com domain name, the UDR procedure of ICANN needs to be implemented and a fee of between £1,500 - £5,000 may be payable for a decision depending on the number of domains included and the number of panellists.

It will not come as a surprise to the reader of this article to find that the cyber-squatter, when approached about the site, indicates that they will be prepared to sell the site for a sum of something less than the UDP expert decision fee. This is, of course, a far cry

from the many hundreds of thousands people hope to make by registering great brand names, but no doubt is providing a useful income for numerous small time crooks across the world.

Companies can employ a number of strategies to deal with this. We do not advise the registration of every name with every extension as that is ridiculously expensive. There are however three elements companies can use to protect themselves.

The first is to consider is whether a trade mark registration is possible. This means that there will then be no difficulty about using the UDR in a difficult situation and also means that the cyber-squatter cannot factor into their arguments the possibility that you might lose at the UDR.

The second is to register a few strategic domain names so that the opportunities to cyber-squatters are much reduced.

The third, and often overlooked element, is to make sure that your own website comes very high up in the results when a member of the public searches for you using Google or Yahoo. This tactic will have the effect of ensuring that one of these dishonest registrations come much lower down and are, therefore, not seen by the general public. This also reduces the likely reward for a cyber-squatter in registering such a name and will hopefully discourage them.

Doing nothing is not an option – strategies should be regularly reviewed and test searches carried out often to avoid embarrassing moments!

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Use Class – Changes for the better?

It is a myth that all uses of property fall into a 'Use Class', and that any change of use from one class to another needs planning permission. Recent changes to the use classes illustrate that this is incorrect.

Pubs used to be in class A3 together with restaurants, cafés and hot food takeaways. Since the 21st April 2005 hot food takeaways are now in class A5, pubs and bars are in class A4 and restaurants and cafés remain in class A3. Mixed use premises, say, predominantly food sales at midday and drink sales in the evening, or 50% food and drink consumption on the premises and 50% takeaway, are mixed use and not within any use class.

Planning permission is normally required for any "development", including a "material change of use". Changes of use which are not "material", do not need planning permission. Some use changes are 'permitted development' under planning law, and therefore usually need no express grant. It used to be permitted development to interchange between any of the old class A3 uses, such as from pub to hot food takeaway. Some permitted development changes for food or drink uses have survived the segregation into new classes; changes from A5 hot food takeaway to A3 restaurant or from A4 pub to A3 café are expressly permitted, but permitted development changes to pub or hot food takeaway from other A class uses have gone.

Mixed use premises are outside the use classes and never have change of use permitted development rights, but changes from say a class A use to a mixed food and drink use, or from one mixed use to another will still not necessarily be "material" and need planning permission. The same principle applies to changes from one use class to another, but is unlikely to allow free interchange between use classes A3, A4 and A5.

It will now be increasingly important to have good information and records about trading patterns on any sale or purchase of food and drink businesses. For owners of existing hot food takeaways with no express planning permission, it may be prudent to review the available information and, if the case is strong, apply for a Certificate of Lawfulness. A certificate, if granted, is as good as planning permission for most

purposes, but a failed application is effectively an invitation to the Local Planning Authority to consider taking enforcement action and shutting the business down, so a careful appraisal is needed.

For some people "retail therapy" is a leisure occupation. Shops remain in class A1, but retail warehouse clubs are now expressly excluded from any class. Internet cafés have been put into class A1, (unlike class A3 "eating and drinking" cafés). There are permitted development rights to move from Class A3 to A1, but not for the reverse change from internet to A3 café. Changes to the law have ended uncertainty about retail intensification, confirming that new mezzanine floor space needs express planning permission. Other leisure uses have also been affected by changes. The D2 "Assembly and Leisure" class includes cinema, concert hall, bingo hall or casino, dance hall and various indoor and outdoor recreational facilities. Night clubs have now been treated like theatres and amusement arcades and expressly excluded from this and any use class. Disputes are expected over whether particular evening entertainment venues are "night clubs" for these purposes, and inside or outside of class D2. Some encouragement was also given last year in PPS7 to new equine leisure facilities, especially small scale, and linked to farm diversification.

The effect of these alterations to planning law and policy is mixed; flexibility and encouragement for some operations, and tighter control for others. Although not strictly retrospective, they impact on existing owners and operators of businesses, affecting the status of unauthorised changes of use which have already taken place, and the scope for future changes, especially within use classes A1 to 5. This in turn will affect business operation, development, potential freehold and rental valuations.

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Seminar Listings

Our planning, property and employment seminars will be running as follows.

Planning

Plymouth	12th July 2005
Taunton	14th July 2005
Exeter	19th July 2005

Employment/Commercial

Exeter	11th October 2005
Plymouth	13th October 2005
Bridgwater	18th October 2005
Truro	20th October 2005
Taunton	25th October 2005

For further information on our events, including seminars covering employment, property and commercial issues please visit our website at www.foot-ansteys.co.uk.

Commercial Property

Taunton	8th November 2005
Exeter	10th November 2005
Plymouth	15th November 2005
Truro	17th November 2005

Deals Done

We are pleased to announce a busy start to the year with three major deals within the last few months. The Mason's Arms was of particular interest and significance as the pub has, on several occasions, been voted National Pub of the Year.



Foot Anstey were also delighted to support the 2005 Food and Drink Awards for the second year running. This year we sponsored the award for Best Entrepreneur/ Innovative product of the year, won by South Devon Chilli Farm. The awards are in association with Devon Life and support and highlight local suppliers and producers.

For further details please contact Keith Biggs at keith.biggs@foot-ansteys.co.uk.

Getting Organised

Many employers within the leisure industry have a number of key permanent staff who stay with them throughout the year. These essential employees are supplemented by a much larger number of seasonal staff. Even those organisations in the industry that are not explicitly seasonal tend to experience a relatively high turnover of a significant percentage of their staff.

In such circumstances employees need to have an organised personnel function. This will often be the responsibility of the owner in a small business to a team of people in larger organisations. Whoever is responsible, there are a number of basic things that all employers need to watch out for.

Make sure that an employee (even if you are calling them casuals or temps) have a legal right to work in the UK. You commit a criminal offence if they do not (see our article on page 3).

Understand that agency staff following recent case law may be your employees as the "end user". If you use agencies ensure that you know and are happy with the basis on which they engage people and the basis on which they are supplied to you.

Remember that it is good practice to ensure that all employees have a clear written contract of employment. Make sure they know the terms on which they are employed and what your policies and procedures are.

Make sure that you manage risk to your employees particularly when there is a real danger for example if customers are likely to be drunk, or employees are on duty at night.

Use probationary periods effectively. If an employee is really no good do not make the decision to terminate after he or she has been employed for one year. One year is the normal qualifying period of employment for unfair dismissal claims.

Never sack a pregnant employee without taking legal advice first. It will be much cheaper than taking advice after the sex discrimination claim lands on your desk.

Be aware of the Disability Discrimination Act; it protects job applicants as well as your staff.

Manage short term regular absence effectively. If you do not, it can become contagious.

Ultimately the best advice I can give is learn enough about employment law so you can spot an employment issue before you tread on an 'employment mine' rather than after one has gone off.

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