



AUTHORISATION OF SALES OF ALCOHOL

The Law

- The Licensing Act 2003 imposes a mandatory condition on all premises licences requiring every sale of alcohol to be made or authorised by a personal licence holder. This may be the Designated Premises Supervisor but could be any personal licence holder.
- This legal requirement has been the subject of much confusion and uncertainty amongst the trade and also police and licensing inspectors. The Government has taken steps to clarify what this condition means in practice.

What it means

- The condition replicates the situation under the old licensing regime whereby responsibility for all sales rested ultimately with the licensee and staff were given implicit permission to sell on their behalf.
- From a practical and operational perspective, what this means is that there must be an explicit act of authorisation which can be referred to. This authorisation must come from a personal licence holder – not necessarily the DPS – and be given to all members of staff.
- It also means that the personal licence holder giving the authority to sell alcohol retains responsibility for the actions of those thus authorised. It is in their interests, therefore to ensure that they are not too remote from the day-to-day management of the premises otherwise their licence may be in jeopardy.
- The Government has recently revised the Guidance it gives to licensing authorities and the police on this matter. This is important as it can be relied upon by operators if they find their actions being questioned during licensing inspections. For example, some police forces have claimed the condition requires a personal licence holder to be on site at all times.
- Guidance states that:
“This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor. Similarly the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make such sales or that they must be personally present at every transaction. Authorisation does not imply direct supervision of each sale of alcohol by a personal licence holder. Nevertheless, it seems reasonable to expect that authorisation should be meaningful and properly carried out.”

How do you demonstrate effective authorisation?

- Ultimately it will be for the courts to decide whether authorisation has been properly given, but it will only arise if the DPS is absent for long periods of time and problems arise. The following steps will demonstrate due diligence:
 - **There should be an overt act of authorisation:** It cannot be implicit, it should be clearly explained and a point should be made of drawing staff attention to the act. A clear written statement is the best means of achieving this.
 - **Identify the individuals:** those authorised to sell alcohol should be clearly identified. There is no requirement to identify the person giving the authority, although this may be helpful – remember it can be any personal licence holder in a position to oversee sales.
 - **Specify the activity:** The statement should clearly set out which activity is being authorised, namely the sale of alcohol



How to apply this to your business

- It is recommended that a written statement is issued to all staff before they undertake any bar duties. Authorisation can be given individually or collectively, but must be given by a personal licence holder. Under normal circumstances, it is recommended that this will be the DPS as it is part of their role and responsibility to supervise sales and therefore authorisation can be monitored, thus further lessening the risk of legal challenge.
- Authorisation could be appended to an individual's contract of employment, but this would only be allowed if the person signing the contract was also a personal licence holder with some involvement in the day-to-day management of the site. Moreover, it is questionable whether a one-off statement of this nature would satisfy the requirement to be 'meaningful' and able to be monitored. Operators must also bear in mind that the statement would need to be amended if the person giving the authorisation left the company. A change of contract is subject to separate legal rules.
- A more appropriate route would be display a generic staff notice in a back of house area, naming all those authorised to sell alcohol. This has the advantage of being easily changed and can be referred to during an inspection if challenged.
- The notice could take one of two forms – a typed notice covering all staff employed by the business at any given time, or a notice on a white board which is changed at the start of each shift and only covers those staff working in the premises at that time. In the first notice the person giving the authorisation would remain the same and would probably need to be the DPS. In the second notice, the authoriser could change as the manager for the shift changed and could be any personal licence holder. The latter option may be preferable for larger outlets where several personal licence holders share managerial responsibility as it demonstrates more effective supervision/authorisation. It also represents the least risk to the business as action could be taken against a number of individuals for illegal sales.
- The notice should be prominently displayed. A sample text is set out below:

To Whom It May Concern:
Name and address of the premises

Licensing Act 2003 Authority for the sale and supply of alcohol

Ibeing the designated premises supervisor named in the licence of the above premises/ being a personal licence holder (licence no ...), hereby authorise the following persons to sell or supply alcohol on these premises at any time during permitted hours.

(names to be entered) to cover all current bar staff/ those working on site at that time .

Signed and dated

This notice would need to be amended as staff changed – both the personal licence holder giving authorisation and those making the sales.

- The courts would also look at any arrangements for monitoring of sales in the absence of the personal licence holder who authorised them. This could include incident logs, refusal of sales or problems to be reported at the end of a shift and staff training.

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Ealing, 3 July 2006