



Insolvency and Licensed Premises. A Major Trap. Don't Fall in!

BRIEFING

Introduction

With the Campaign for Real Ale suggesting that 7500 pubs face closure in the next four years, it seems that insolvencies of licensed premises will only keep rising. A pub or a supermarket without a licence to sell alcohol is not an attractive proposition to potential buyers. Where there is any possibility of licensed premises being sold as a going concern, or if the business may continue to trade during the insolvency procedure, insolvency practitioners must act immediately on appointment to comply with the statutory rules.

The Law

The Licensing Act 2003 ('the 2003 Act') came into effect in November 2005, and applies to premises in England and Wales selling alcohol, providing public entertainment and providing late night refreshment. Wherever the sale of alcohol occurs, the following things must be in place.

- A premises licence. This may be held by an individual or an organisation, and in the ordinary course of events is valid indefinitely.
- A Designated Premises Supervisor ('DPS'). One person with day-to-day responsibility for the premises should be nominated as DPS. This provides the authorities with a single point of contact and responsibility. The DPS

must also hold a personal licence to sell alcohol.

Whilst a personal licence and the appointment of a DPS will survive an insolvency of the premises licence holder, the premises licence itself will immediately lapse. From the moment the premises licence holder becomes insolvent, no licensable activities may take place on the premises.

Insolvency is given a wide definition under the 2003 Act and includes:

- For an individual
 - The approval of a voluntary arrangement proposed by the individual
 - Being adjudged bankrupt or having the estate sequestrated
 - Entering into a deed of arrangement for the benefit of all creditors or a trust deed for his creditors
- For a company
 - The approval of a voluntary arrangement proposed by its directors



- The appointment of an administrator in respect of the company
- The appointment of an administrative receiver in respect of the company
- Going into liquidation

From the morning after the insolvency occurs there is a 7 day period in which a premises licence may be reinstated. This is seven calendar days, making no allowance for weekends or public holidays. Failure to meet this deadline will result in the permanent lapse of the licence. A new premises licence must be applied for. This is time consuming and expensive, with no guarantee of success. Resale value of the premises could be significantly reduced.

There are three methods of reinstating the licence.

1. Interim authority notice served by a person with a prescribed interest in the premises (such as the owner of the freehold).
2. Interim authority notice served by a person connected to the former holder (such as the insolvency practitioner).
3. An application to transfer the licence to a person intending to carry on a business at the premises.

An interim authority notice must be served on the relevant Licensing Authority and the chief police officer of the area. From that moment the police

have 48 hours to object. If no objection is received (and the notice has been correctly served) an interim authority ('IA') must be granted. If a timely objection is lodged by the police, the Local Authority will arrange a hearing, which may result in a cancellation of the IA. However, such cancellations are rare and the IA cannot be cancelled until after the hearing has taken place.

An IA expires two months from the date that the interim authority notice was served. At any point in the life of the IA an application to transfer the premises licence can be submitted. Providing the application is submitted in this two month period, the IA will continue until the transfer application has been determined. However, if the IA lapses then all licensable activity must cease and a new licence must be sought.

All applications for transfer of a premises licence must be made with the consent of the licence holder. This can be either the holder of the IA or the insolvency practitioner acting on behalf of the previous licence holder.

In Practice

For insolvency practitioners, preparation in this area is essential. Time limits are short and the clock starts ticking from the moment of insolvency. If insolvency occurred on Maundy Thursday there would be just 3 working days for service of an interim application notice. Imagine the insolvent company has 60 premises licences across 20 local authority areas and you can quickly see the administrative crisis brewing (no pun intended).



Many Licensing Authorities will insist on seeing the original premises licence together with the interim application notice or transfer application. While duplicate licences can be obtained, any delay this causes will eat into the seven day period. A simple check that the paperwork is in order before insolvency is entered can save considerable stress further down the line.

Insolvency practitioners must make a decision on which of the methods of reinstatement to use. There may not be a willing transferee on the horizon so early in the process, so interim applications are more common than transfer applications at this stage. Practitioners then have two months to find a transferee and prepare for a transfer.

Of course, 2 months will often not be enough to arrange a buyer for the business, leaving the licence at risk of lapsing once more. A way around this has been for insolvency practitioners to obtain an IA, and then apply to transfer the premises licence to a managing agent they have put in place. This agent can run the premises until a buyer is eventually found when a voluntary transfer of premises licence can take place.

Insolvency practitioners should note that if they choose to take control of the licence themselves,

they are opening themselves up to personal liability as holder of the licence. For example, a new licence holder will be responsible for ensuring that all licence conditions are adhered to, a breach of condition rendering the licence holder liable to criminal conviction. If the DPS leaves and is not replaced, the premises licence holder will again be committing an offence. Limiting the practitioner's liability is another reason why a quick transfer to a managing agent may be preferable.

Conclusion

The 2003 regime is unforgiving, but premises licences may be crucial to realising the full assets of insolvent individuals and companies. Insolvency practitioners need to be aware of the rules and the strict time limits in place and should consider enlisting the help of a licensing specialist to ensure the continued operation of premises licences throughout the insolvency process.

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