
Underhill's Licensing Guide

Simon Mehigan



LONGMAN
PRACTITIONER
SERIES

Underhill's Licensing Guide

Tenth edition

Simon Mehigan

Barrister



© Longman Group UK Ltd 1989

Published by
Longman Group UK Ltd
21—27 Lamb's Conduit Street
London WC1N 3NJ

Associated Offices
Australia, Hong Kong, Malaysia, Singapore, USA

First edition 1956
Tenth edition 1989

ISBN 0 85121 5378

A CIP catalogue record for
this book is available
from the British Library.

All rights reserved.

No part of this publication
may be reproduced, stored in a retrieval system,
or transmitted, in any form or by any means,
electronic, mechanical, photocopying, recording
or otherwise, without the prior written permission
of the publishers.

Printed and bound in Great Britain by
Mackays of Chatham PLC, Chatham, Kent

Abbreviations

BGLA63	The Betting, Gaming and Lotteries Act 1963
LA64	The Licensing Act 1964
GA68	The Gaming Act 1968
GCLR69	The Gaming Clubs (Licensing) Regulations 1969 (SI 1969 No 1110)
LAA	The Lotteries and Amusements Act 1976
LA88	The Licensing Act 1988

Preface to the Tenth Edition

This is the first edition of this book not to have been written by Michael Underhill. Sadly he died in early 1988 and will be much missed by his professional colleagues and those who appeared before him when he was a circuit judge. He was a good judge: fair, courteous and knowledgeable. I now, with some diffidence, take up where he left off in respect of this book, a new edition of which is particularly necessary because of the many changes in the field of liquor licensing introduced by the Licensing Act 1988. Although the most publicised change affects permitted hours, there are, so far as the licensing practitioner is concerned, many other important innovations: restriction orders, abolition of renewals of extended hours orders, the discretionary grant and limitation of special hours certificates, the disqualification of garage premises, the duration of licences, the increased powers of the clerk to the justices, the deletion of the maximum number of transfer sessions in any year, the power of licensing justices to award costs and the deletion of mens rea in respect of sales to under eighteens. These changes reflect the fact that the Licensing Act 1988 contains the most radical amendment of liquor licensing law for a long time. Most of the new provisions are already in force: a few, as is noted in the text, are effective on 1 March 1989.

In addition, significant new law in respect of the other topics covered by this book has been included and some parts of the book have been rearranged.

I wish to thank my pupil, William Buckley, for his assistance in

producing this edition which I hope would have received Michael Underhill's approval. I also hope that the late John Marriage QC would have approved it, for it was he, with whom I shared a room in chambers until his death, who taught me about licensing law.

5 Paper Buildings
Temple
London
EC4

SIMON MEHIGAN

September 1988

Contents

<i>Abbreviations</i>	vi
<i>Preface to the Tenth Edition</i>	vii
<i>Table of Statutes</i>	ix
<i>Table of Statutory Instruments</i>	xii
1 Liquor Licensing: General	1
1 Disqualification for licence	2
2 Justices' licences	2
3 Licensing procedure	4
4 Permitted loans	9
5 Duration of licences	10
6 Provisional grants	15
7 Register of licences	16
8 Variation of on-licences	16
9 Renewals	17
10 Transfers	20
11 Protection orders	21
12 Removals	23
13 Forfeiture of licence	24
14 Revolution	25
15 Licences in suspense	26
16 Control over the structure of licensed premises	27
17 Occasional licences	28
18 Occasional permissions	30
19 Music and dancing	31
20 Performing right licences	32
21 Appeals to the Crown Court	33
2 Liquor Licensing Restaurants and Guest Houses;	
Extensions of Permitted Hours	35
1 'Part IV Licences'	35
2 Orders of exemption ('extensions')	40
3 'Restaurant' or 'supper hours' certificates	42

4	'Special hours' certificates	43
5	Extended hours orders	47
3	Clubs	50
1	Qualifications for registration	51
2	Application for a certificate	54
3	Refusal of a certificate	55
4	Objections to and cancellations of registration	56
5	Disqualifying premises	57
6	Procedure	58
7	Club rules	61
8	Sale of liquor by registered clubs	62
9	The register of clubs	64
10	False statements, etc	64
11	Appeals	65
12	Inspection of premises	65
13	Fire authorities and clubs	65
14	Search warrants	66
15	Licensing of club premises	66
4	The Licensing of Gaming Clubs	68
1	The licensing system	68
2	Application for grant of licence	71
3	Application for renewal of licence	73
4	Proceedings on application for grant or renewal	73
5	Grounds for refusal to grant or renew licence	74
6	Restrictions on licence	77
7	Power to make regulations	78
8	Notification of the Board's advice	79
9	Appeals	80
10	Revocation by the Board of certificate of consent	80
11	Cancellation of licence	82
12	Form of licence	84
13	Duration of licence	84
14	Death of licence holder	84
15	Transfer of licence	85
16	Payment of fees	87
17	Notification of change of directors	87
18	Relinquishment of licence	87
19	Registration of members' clubs for gaming	88
20	Approval by the Board of gaming operatives	93

CONTENTS

v

21	Bingo clubs	95
22	Disqualification orders	97
23	Restrictions on games to be played	98
5	The Licensing of Betting Offices	99
1	The licence	99
2	The application	100
3	Proceedings before the authority	102
4	Grounds for refusal of grant	103
5	Appeals	103
6	Renewal of licence	104
7	Duration of licence	105
6	Lotteries	107
1	Small lotteries incidental to exempt entertainments	107
2	Private lotteries	108
3	Societies' lotteries	109
4	Local lotteries	112
5	Frequency of lotteries	113
6	Registration of lottery schemes with the Gaming Board	113
7	Contents of lottery schemes	115
8	'Instant' lotteries	116
9	Rules for authorised lotteries	116
10	Societies' lotteries: summary	117
11	Agents	119
Appendices		121
1	Notice of application for justices' licence	122
2	Application for restaurant certificate (licensed premises)	122
3	Application for special hours certificate	123
4	Notice of appeal to the Crown Court	123
5	Application for grant of betting office licence	124
6	Application for renewal of betting office licence	125
7	Application for grant of gaming club licence	125
8	Application for renewal of gaming club licence	126
9	Specified areas for 'hard' gaming	127
Index		129

Table of Statutes

Alcoholic Liquor Duties Act 1979 —	Gaming Act 1968 — <i>contd</i>
s 4.....2	s 52(1).....68
Betting and Gaming Act 1960.....99	Sched 2 69, 71, 73-4, 76-7, 79-80,
Betting and Gaming Duties Act 1972 —	82-5, 87
s 13 75, 87, 90	para 13.....73
Sched 2 75, 87, 90	paras 58-6186
Betting and Gaming Duties Act 1981 —	Sched 3 88-93
s 14 75, 87, 90	Sched 593
Sched 275,87,90	Gaming (Bingo) Act 1985.....95
Betting and Gaming (Lotteries) Act	Industrial and Provident Societies Act
1963 69, 107	1965 53, 63
s 9(2).....99	Insolvency Act 1986 —
(3).....100	Pt VIII20
Sched 199	Interpretation Act 1978 —
Finance Act 1966 —	s 7.....4
s 2.....75,87	Landlord and Tenant Act 1954 —
s 1390	Pt II2
Finance Act 1967 —	Late Night Refreshment Houses Act
Sched 7, para 1528	1969 37, 39
Finance Act 1970.....1	Licensing Act 1953.....58
s 2.....90	Licensing Act 1964.....8, 9, 59, 61, 66
Sched 1 75, 87, 90	ss 1, 2.....3
Fire Services Act 19476, 65, 71	s 3.....3, 67
Friendly Societies Act 1974 53, 63	(1).....8
Gaming Act 1968.....68-71, 75-6, 78-9,	s 4.....3, 50
81-2, 84-6, 88, 90, 93, 95, 98, 107	(1), (2).....8
Pt 197	s 5.....23
s 2.....68	s 6.....15
s 3.....96	(4), (4A), (4B), (5).....15
s 1295, 96	s 7.....17
(1).....95	s 8.....20
s 1399	s 9.....2, 3
s 1678	(4A), (4B)3
s 1992	s 1021
s 2094	(3)(d).....40
s 23(1),(2).....96	s 1121
ss 24, 25.....96	s 1523
s 4887	s 1927-8

TABLE OF STATUTES

Gaming Act 1968 — *contd*

s 19(6)	28
s 20	27
(3)	25
s 20A	8, 25, 33
(5)	14
s 21	33
(1)(ee)	11
(f)	17
(4)	14, 19
s 22	33, 78
s 23	33
(4)	14
ss 24, 25	33
s 26	11
s 27	13, 24
s 30	16
s 31	16, 20
s 37	16
s 40(6)	50
s 41	51
(2)(d)	54
s 42	53
s 43	55
s 44	56
ss 45, 46	65
s 47	57
s 48	62
s 49	62
(2)	63
s 50	64
s 51	64
(2)	64
s 52(3), (4)	57
s 53	64
s 54	66
s 55	50, 66-7
s 59	9, 36
s 60	9
(4)	9
(6)	10
s 61	9
s 63	36
(1)(a)	9
s 64	12
s 65	12
s 67A, 67B, 67C	10, 11
s 67D	10
s 68	42-3
(3)	42
s 69	42-3
ss 70	47
s 71	47

Gaming Act 1968 — *contd*

s 71(3)	47
s 72	47
(3)	48
s 73	47
(1), (4)	48
ss 74, 75	40
ss 76-78	43
s 78A	45, 46
s 79	43, 47
s 80	43, 45
(1)	44
s 81	43-5
s 81A	45
(2), (3)	45, 46
(4)	46
s 81B	45
(2)	45
s 82	43
(2)	45
s 83	43-4
s 89	41, 43
s 92	43, 46, 48
Pt IV	19, 21-2, 24-5, 33, 35, 37-40
s 93	35
(4)	39
s 94	8, 35
(1)	35
(2), (3)	36
(5)	37
s 95	35
s 96	35, 37
s 97	35
s 98	35, 37
s 99	35
(1)	38
s 100	22, 25, 35, 39
(4)	40
s 101	35, 39
s 132	27
s 141	26-7
s 142	26
s 143	26-7
ss 144-147	26
s 160	1, 2
(4)	25
s 161	8
s 169	25
s 176	24
s 180	28
s 183(2)	40
s 184	24
s 193A	17, 19

TABLE OF STATUTES

Gaming Act 1968 — <i>contd</i>		Local Government Act 1963 —	
s 193B	9	Sched 12	31
s 197	4	Local Government Act 1972 —	
s 199(a)	2	Sched 29, para 6(6)	6
s 201	1, 42	Local Government (Miscellaneous	
(1)	35	Provisions) Act 1982	31–2
(4)	4, 6	Lotteries Act 1975	107
Sched 1	4	Lotteries and Amusements Act	
Sched 2	4, 11, 24, 47	1976	107, 114, 117
para 8	18	s 2	112, 114
Sched 5	54	s 3	107
Sched 6	43, 46, 48	s 4	108
Sched 7	51–3, 61	s 5	109
Sched 8A	11	s 6	112
Licensing (Amendment) Act 1980 —		s 7	112
s 1(2)	17	(4)	112
Licensing (Occasional Permissions)		s 9	112
Act 1983	1, 30	s 11	116
Licensing (Retail Sales) Act 1988 .	1, 10	s 23	116
s 1	9	Sched 1	111
(1)	1	Pts I, II	111
(4)	10	Sched 2	113
s 2	9	Private Places of Entertainment	
s 3	10	(Licensing) Act 1967	32
s 5(1)	44	Recreational Charities Act 1958 —	
(2), (4)	45	s 2	88
s 10	3	Representation of the People Act	
s 11(1)	12	1983	16, 20
s 12	25	s 168(7)	18, 19
(1)	14	Seditious Meetings Act 1817 —	
s 13	19	s 29	25
s 15	9	Sporting Events (Control of Alcohol	
Sched 1, para 1	64	etc) Act 1985	12
Sched 3, para 3	11	s 5B	29
Sched 3, para 9	45		

Table of Statutory Instruments

Betting (Licensing) Regulations 1960 (SI No 1701).....	100, 105	Gaming Clubs (Prohibition of Gratuities) Regulations 1970 (SI No 1644).....	79
Crown Court Rules 1982 (SI No 1109).....	80	Gaming (Records of Cheques) Regulations 1988 (SI No 1251).....	79
r 12	34	Licenses in Suspense (Extinguishment) Order 1982 (SI No 1837)	27
Gaming Act (Registration Under Part II) Regulations 1969 (SI No 550) — reg 2	98	Licensing (Extended Hours Orders) Rules 1962 (SI No 75)	47
Gaming Clubs (Bankers' Games) Regulations 1970 (SI No 803)	98	Licensing (Extended Hours Orders) (Amendment) Rules 1988 (SI No 1188).....	48
Gaming Clubs (Hours and Charges) Regulations 1984 (SI No 248)	79	Licensing (Special Hours Certificates) Rules 1982 (SI No 1384)	45-6
Gaming Clubs (Licensing) Regulations 1969 (SI No 1110)	71, 73, 79, 82, 84, 86, 89	Licensing (Special Hours Certificates) (Amendment) Rules 1988 (SI No 1338).....	45
Pt II	75, 78	Licensing Rules 1961 (SI No 2477)....	42
Gaming Clubs (Multiple Bingo) Regulations 1986 (SI No 834)	96	Lotteries Regulations 1977 (SI No 256)	114-15, 119
Gaming Clubs (Permitted Areas) Regulations 1971 (SI No 1538)....	75, 79		

Chapter 1

Liquor Licensing: General

By s 160 of the LA64 it is in general an offence to sell by retail intoxicating liquor without a 'justices' licence'. This means a licence granted by the licensing justices for the licensing district concerned. A retail dealer no longer requires an excise licence to authorise his sales: the justices' licence alone is sufficient.

Intoxicating liquor is defined in s 201 of the LA64 as follows:

'Intoxicating liquor means spirits, wine, beer, cider, and any fermented, distilled or spirituous liquor; but (apart from cider) does not include any liquor for the sale of which by wholesale no excise licence is required.'

Angostura bitters are excluded from this definition by the Finance Act 1970.

Note

(a) *Sale by retail* prior to 1 November 1988 meant the sale at any one time to any one person of quantities not exceeding the following:

- (i) In the case of spirits, wine or made wine, nine litres or one case;
- (ii) In the case of beer or cider, twenty-one litres or two cases.

From 1 November 1988 when the Licensing (Retail Sales) Act 1988 came into force there is a new definition of 'Sale by retail' (s 1(1)). It now means a sale of intoxicating liquor at any one time to any one person except where the sale is—

- (a) to a trader for the purposes of his trade;
- (b) to a registered club for the purposes of the club;
- (c) to any canteen or mess;
- (d) to the holder of an occasional permission within the meaning of the Licensing (Occasional Permissions) Act 1983 for the purposes of sales authorised by that permission; or
- (e) of not less than the following quantities—

- (i) in the case of spirits, wine or made-wine, nine litres or one case; or
- (ii) in the case of beer or cider, twenty litres or two cases, and is made from premises owned by the vendor, or occupied by him under a lease to which the provisions of Part 2 of the Landlord and Tenant Act 1954 apply.

Made wine means any liquor obtained from the alcoholic fermentation of any substance or by mixing a liquor so obtained with any other liquor or substance, but excluding wine, beer, black beer, spirits or cider.

A *case* means one dozen units each consisting of a container holding not less than sixty-five nor more than eighty centilitres, or the equivalent of that number of such units, made up wholly or partly of containers of a larger or smaller size (Alcoholic Liquor Duties Act 1979, s 4).

(b) Manufacturers also require licences, but this book is principally concerned with retailers' licences.

(c) The Vice-Chancellor of the University of Cambridge still retains the ancient privilege of granting on- and off-licences to sell wine in Cambridge (see LA64, s 199(a)).

1 Disqualification for licence

The following persons are disqualified from holding a justices' licence:

(a) A sheriff's officer or officer executing the legal process of any court (LA64, s 9);

(b) A person convicted of forging a justices' licence or making use of a forged justices' licence knowing it to be such (LA64, s 9);

(c) A person convicted of permitting to be a brothel premises for which at the time of the conviction he held a justices' licence (LA64, s 9);

(d) Any person who is convicted of selling or exposing for sale by retail any liquor without holding a justices' licence, or, being the holder of such a licence, is convicted of selling or exposing for sale by retail any liquor except at the place for which the licence authorises its sale, may be ordered to be disqualified from holding a justices' licence:

- (i) on a second conviction for a period not exceeding five years;
- (ii) on a third or subsequent conviction for any term of years or for life (LA64, s 160).

Note

(a) The justices also have power in certain cases to make disqualification orders for restaurant licences, residential licences and restaurant and residential licences (see Chapter 2).

(b) Premises are disqualified for receiving a justices' licence where they are situated on land acquired or appropriated for 'special roads'. Special roads are highways provided for under the Highways Act 1980, eg motorways (LA64, s 9).

(c) Premises which are primarily used as a garage, ie for the retail of petrol or derv or the sale/maintenance of motor vehicles, are now disqualified from receiving a justices' licence (LA64, s 9(4A) and (4B) as inserted by LA88, s 10). However, this change does not affect garage premises for which prior to 22 August 1988 there was a justices' licence so long as the licence does not lapse.

2 Justices' licences (LA64, ss 1-4)

Justices' licences are granted by the licensing justices at their 'Licensing Sessions'. This term is used to cover the licensing justices' General Annual Licensing Meeting (often called Brewster Sessions) and the intervening transfer sessions. The licensing justices are a committee of the ordinary justices of the peace to whom special tasks in connection with licensing have been assigned.

There are two main kinds of justices' licence: on-licences and off-licences.

On-licences are of five kinds depending on the liquor which the licence allows to be sold:

- (a) Intoxicating liquor of all descriptions;
- (b) Beer, cider and wine only;
- (c) Beer and cider only;
- (d) Cider only;
- (e) Wine only.

Off-licences are of two kinds, also depending on the type of liquor concerned:

- (a) Intoxicating liquor of all descriptions;
- (b) Beer, cider and wine only.

Note An applicant for a licence for an ordinary public house will apply for a licence to sell 'intoxicating liquor of all descriptions, either on or off the premises'. This is often called a 'full on-licence' or 'publican's licence'. An on-licence normally authorises sale for consumption either on or off the premises. If it is desired to permit

on-sales only, a condition (see 3 below) may be attached to the licence to this effect.

3 Licensing procedure (LA64, Sched 1)

The licensing justices for each district must hold a General Annual Licensing Meeting and not less than four transfer sessions in the twelve months beginning with February every year. The licensing sessions are held at as nearly regular intervals as may be. Brewster Sessions (the popular name for the General Annual Licensing Meeting) are held in the first fortnight of February.

The clerk to the justices is required to advertise the time and place for holding any licensing sessions in a newspaper circulating in the district, and to send notice of it:

- (1) to every member of the licensing committee (ie the justices);
- (2) to every holder of a justices' licence in the district;
- (3) to every person who gives or has given the clerk notice of intention to apply for a licence at the sessions;
- (4) to the chief officer of police for the police area or each of the police areas in which the district or any part of it is situated. As to 'chief officer of police' see LA64, s 201(4) and below, where the meaning of the phrase is set out.

(a) Notices (LA64, Sched 2)

An applicant at a licensing sessions for the grant of a new justices' licence or for the ordinary or special removal or transfer of a justices' licence must give the *notices* below.

(By s 197 of the LA64, any notice under the Act may be served by post; accordingly the presumptions in s 7 of the Interpretation Act 1978 will apply to prove service in the absence of contrary evidence. In practice registered or recorded delivery post is generally used for the service of such notices in order that proof of service may be readily available or evidence is called to prove addressing, pre-paying and posting.)

(1) Not less than twenty-one days before the day of the licensing sessions he must give notice in writing to the clerk to the justices, the chief officer of police and the proper local authority and, in certain cases, to the relevant fire authority (see below).

(2) In the case of a transfer he must give the like notice to the holder of the licence (if any) and in the case of a removal he must give the like notice to the registered owner of the premises