

LICENSED PREMISES AND THE NEW “ALCOHOL BANNING ORDERS”

On 31st August 2009, the Government introduced further provisions affecting the Licensing trade whereby, under the Violent Crime Reduction Act 2006, Magistrates will have the power to ban certain individuals from some or all Licensed premises, from town centres and from drinking in public, if their conduct has been fuelled by alcohol.

It should not be forgotten that Licensees already have the inherent power to order anyone on their premises to leave for any reason whatsoever, whether their conduct is offensive or not.

However, the new provisions go much further in scope and provide for sanctions for anyone breaching a court order banning them from licensed premises.

How is the Licensed Trade affected by these new laws ?

Guidance issued by the Home Office envisages that relevant authorities should take the initiative to inform licensed premises of persons who have been made the subject of an Alcohol Banning Order. It is also envisaged that the information to be given to licensees will include when the Order was made, the duration of the order, when the order is due to end and details of any variations to the order.

What resources will be available for this information to be imparted to licensees, precisely how this will work in practice, and how effective it will be, only time will tell.

There are likely to be practical difficulties in monitoring and enforcing such orders. An obvious practical difficulty is where, for example, an Order is made by say a court in Southampton, and the person concerned then enters licensed premises in Newcastle, in breach of the order. How will the Newcastle premises know about the order- who is going to tell them ?

Further, it is expected that licensed staff, being aware of such an Alcohol Banning Order against someone, would co-operate and report any breaches to the police.

The Home Office Guide recommends that licensed staff should be alert to their responsibilities in refusing service to persons they know are subject to an Alcohol Banning Order.

If licensed staff serve alcohol to a person they know to be the subject of an Alcohol Banning Order, then, such conduct could be relayed onto the relevant Licensing Authority, and there is a risk, in such circumstances, that this might lead to a review the Premises Licence for those premises.

What is an Alcohol Banning Order ?

Dubbed “**Booze ASBOs**” by the Media, Alcohol Banning Orders are modelled on existing Anti Social Behaviour Orders. Such orders constitute a Civil Order (not a criminal Order) that can be sought primarily in the Magistrates Court (sitting in its civil capacity), or Youth Court and such Alcohol Banning Orders can be made against any individual, aged 16 years of age or over, if they have become engaged in any criminal or disorderly conduct whilst under the influence of alcohol.

The Order can also be made in the County Court provided there are existing proceedings before that court.

Unlike the existing restrictive powers under the Licensed Premises (Exclusion of Certain Persons) Act 1980, whereby the court can ban individuals from Licensed premises if they have committed criminal acts **on** licensed premises, the new powers can lead to more far reaching bans being imposed even where the criminal conduct occurs otherwise than on licensed premises.

Who can apply for an Alcohol Banning Order ?

The only people who can apply to the court for a Banning Order are-

- The Police
- The Local Authority
- The British Transport Police.

It should be noted that such an Alcohol Banning Order can only be made following an “**Application**” being made to the relevant court by one of the relevant authorities mentioned above.

The powers contained in the Violent Crime Reduction Act 2006 for courts to make a Banning Order **following conviction**, have not yet been brought into force. The reason for this being that the Government wish, in the first instance, to monitor and evaluate the effectiveness of these new measures under these new provisions.

How long does an Alcohol Banning Order last ?

An Alcohol Banning Order can last for a minimum of 2 months and a maximum of 2 years.

However, such an Order can be varied or discharged early upon such application being made either by the original authority or by the person subject to the Order.

There is also a right of appeal against the making of the order or its terms.

What will an Alcohol Banning Order consist of ?

Such an Order can include a variety of “prohibitions” as the court considers necessary in order to protect persons and/or their property from further conduct by that person of that kind, whilst under the influence of alcohol.

The most common terms will include an order banning the person concerned from all or some licensed premises, whether pubs, clubs or off-licences, banning them from certain parts of the Town and from drinking alcohol in public.

Can attendance on an Approved Course reduce the term of an Alcohol Banning Order ?

Yes.

Similar to the drink drive provisions whereby drink drivers can reduce the term of their driving disqualification by attending and successfully completing an approved course, so too can people, the subject of an Alcohol Banning Order, reduce their ban by a half if they successfully complete attendance at an Approved Course, known as a “**Positive Behaviour Intervention Course**”, aimed at helping those concerned to overcome their problem

drinking. This will normally be offered to them by the court when imposing the Alcohol Banning Order in the first place, and the cost of attendance will have to be borne by the person made the subject of such an Order, and is likely to be between £120 and £250.

What if there is a breach of an Alcohol Banning Order ?

Whilst the Banning Order itself is a civil order, and not a criminal order, breach of the order, without reasonable excuse, will in fact constitute a criminal offence, leading to the person concerned being arrested and liable, if found guilty of breach, to a maximum fine for breach of £2,500. At present no custodial sentence is available for breach of such an Order.

Paul Trincas

Word count- 1,040