

**LEISURE AREAS (LICENSING) ACT 2001**

**Principal Act**

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| <b>Act. No. 2001-24</b> | <i>Commencement</i> | 2.8.2001 |
|                         | <i>Assent</i>       | 2.8.2001 |

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AN ACT TO MAKE SPECIAL PROVISION FOR THE LICENSING AND REGULATION OF PLACES OF PUBLIC ENTERTAINMENT, PLACES WHERE FOOD, DRINK OR INTOXICATING LIQUOR ARE SOLD OR CONSUMED, AND FOR MATTERS CONNECTED THERETO, IN CERTAIN AREAS OF GIBRALTAR.

## PART I.

### PRELIMINARY AND INTERPRETATION.

#### **Citation.**

1. This Act may be cited as the Leisure Areas (Licensing) Act 2001.

#### **Interpretation.**

- 2.(1) In this Act and unless the context otherwise provides—

“commencement date” means the date this Act comes into force;

“discotheque” means a place commonly known as a discotheque and includes a dance hall and any other premises where one of the principal activities carried out by those present includes dancing and listening to music;

“entertainment” means the public performance of stage plays, audio-visual entertainment, dancing, singing, the playing of music or any other form of public entertainment of the like kind, and a reference to entertainment shall include a reference to events commonly known as fairs, and individual fair rides whether or not forming part of a fair, fete or tombola; for the purposes of this paragraph, a person shall be deemed to play music where he sounds or plays upon any musical instrument or where he operates or causes or suffers to be operated any wireless loudspeaker, gramophone, amplifier or similar instrument;

“external area” means an area whether or not forming part of the public highway adjacent to a relevant establishment in respect of which the persons conducting business in the relevant establishment have a licence under this Act or any other Act or grant, to place tables, chairs or parasols for use by customers of the relevant establishment;

“Leisure Area” means such area or areas of Gibraltar as the Chief Minister may designate from time to time for the purposes of this Act by notice in the Gazette;

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“licensed premises” means premises licensed under Part IV to sell by retail food, drink or intoxicating liquor and includes any external area;

“Licensing Authority” means the Chief Secretary of the Gibraltar Government or such other person, persons, or entity as may, from time to time, be prescribed;

“noise” includes vibration;

“old law” means the law in force and applicable to relevant establishments prior to the commencement date;

“person responsible” in relation to the emission of noise means the person or persons to whose act or default or sufferance the noise is attributable and includes the person in charge and in control of the premises from which the noise emanates;

“prescribe” means prescribed by the Chief Minister by regulations: and “prescribed” shall be construed accordingly;

“premises” includes land;

“relevant establishment” means—

- (a) a bar, restaurant, cafeteria or other such establishment situated within a Leisure Area engaged in the sale or provision of food, drink or intoxicating liquor for consumption within the premises or any external area of that establishment; or
- (b) a discotheque whether or not situated in a Leisure Area.

(2) Nothing in any other statutory provision or rule of law shall affect any right conferred, or restriction imposed, by this Act.

**PART II.**  
APPLICATION OF ACT  
AND RELATION TO OTHER STATUTORY PROVISIONS.

**Application of Act.**

3. This Act shall apply to relevant establishments.

**Application of other Acts to relevant establishments.**

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4.(1) The statutory provisions set out in subsection (2) shall not apply in or to a relevant establishment in respect of any activity or thing licensed under this Act.

(2) The statutory provisions referred to in subsection (1) are the following—

- (a) section 272 and 273 of the Criminal Offences Act<sup>1</sup> (playing of musical instruments and other noises);
- (b) section 7 of the Licensing and Fees Act<sup>2</sup> (Licence for manufacture or sale of intoxicating liquor);
- (c) the Entertainments Act<sup>3</sup>, save for the provisions relating to cinematograph entertainment;
- (d) section 250 of the Public Health Act<sup>4</sup> (placing of tables and chairs on streets);
- (e) section 96 of the Public Health Act (noise or vibration nuisance);
- (f) section 97 of the Public Health Act (restriction of operation on highways etc., of loudspeakers);
- (g) such other statutory provisions as may, from time to time, be prescribed.

## PART III.

### REGULATION OF ENTERTAINMENT IN RELEVANT ESTABLISHMENTS.

#### **Regulation of entertainment in relevant establishments.**

5.(1) No entertainment shall be carried out or provided in a relevant establishment without a licence from the Licensing Authority.

(2) An application for a licence under subsection (1) shall be in such form as the Licensing Authority may require and shall contain particulars of—

- (a) the nature of the entertainment or entertainment event;

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<sup>1</sup> 1960-17

<sup>2</sup> 1961-29

<sup>3</sup> 1934-38

<sup>4</sup> 1950-07

- (b) the steps proposed to be taken to minimise the noise outside the premises resulting from such entertainment;
  - (c) the nature and extent of the sound insulation, air conditioning and ventilation systems available in the premises
  - (d) such other matters as the Licensing Authority may, from time to time, require.
- (3) The Licensing Authority may, in its discretion–
- (a) grant or refuse an application for a licence under subsection (1);
  - (b) attach such conditions as it considers appropriate to a licence under subsection (1), including, but without prejudice to the generality of the foregoing, conditions–
    - (i) relating to the times of the day and night during which the entertainment may be provided,
    - (ii) relating to the maximum permissible levels of externally audible noise generated by the entertainment,
    - (iii) relating to the installation and maintenance of soundproofing of the relevant establishment and to the manner of operation of the relevant establishment to maximise the effectiveness of such sound-proofing;
    - (iv) allowing the Licensing Authority at any time, and as often as he may consider it appropriate, after issue, to vary any term or condition of the licence, to add new terms and conditions, or to rescind the licence;
    - (v) regulating, restricting or specifying the manner in which the entertainment may be provided;
    - (vi) allowing for any change in circumstances;
    - (vii) limiting the duration of the licence to a specified period of time, or to one or more specified events or occasions.
- (4) A licence granted by the Licensing Authority under subsection (1) shall be in writing in such form as may prescribed.

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(5) A licence relating to any form of entertainment not being cinematograph entertainment issued prior to the commencement date under the Entertainments Act in respect of a relevant establishment shall be deemed, as from the commencement date, to have been issued on the commencement date under the provisions of this Act and such licence shall be duly amended in such terms as the Chief Minister may prescribe by notice in the Gazette.

### **Failure to be licensed or to abide by conditions of licence.**

6. A person who organises or provides entertainment in a relevant establishment or leisure area without a licence granted under this Part or in contravention of any conditions attached to such a licence shall be guilty of an offence and liable on summary conviction to a fine at level 4 on the standard scale.

### **Abatement notices.**

7. Where it appears to the Licensing Authority that a person is responsible for any act or omission contrary to section 5 or to the terms and conditions of any licence issued thereunder, the Licensing Authority may, by notice served on that person, order the act or omission to be halted or suspended, as circumstances may require: and any person who knowingly contravenes any provision of such a notice shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

### **Control in the public interest.**

8.(1) It shall be lawful for the Licensing Authority whenever he is of opinion that it is fitting for the preservation of good manners, decorum or of the public peace so to do, to forbid the public acting, presenting or holding of any entertainment in a relevant establishment, and either absolutely or for such time as he shall think fit.

(2) The power of prohibition conferred by subsection (1) may be exercised at any time and notwithstanding that a licence for the entertainment may have been granted in pursuance of section 5.

(3) A person who acts, presents or holds, or causes any person to act, present or hold any entertainment contrary to any prohibition is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

## **PART IV.**

### **REGULATION OF EXTERNAL AREAS AND CATERING SERVICES OF RELEVANT ESTABLISHMENTS.**

**Licences for the sale of food, drink and intoxicating liquor in relevant establishments.**

9. No relevant establishment shall be used for the sale or manufacture of food, drink or intoxicating liquor whether to be consumed on or off the premises without a licence from the Licensing Authority.

**External areas.**

10. No person shall—

- (a) place tables, chairs, parasols or such other object on the public highway within a Leisure Area, or
- (b) use or allow to be used by any person for the sale, provision or consumption of food, drink, intoxicating liquor or any other purpose connected with the business of a relevant establishment, any external area,

without a licence from the Licensing Authority.

**Grant or refusal of applications under section 9.**

11.(1) The Licensing Authority may, in his discretion—

- (a) grant or refuse in whole or in part an application for a licence under section 9,
- (b) attach such conditions as it considers appropriate to a licence under section 9, including, but without prejudice to the generality of the foregoing, conditions—
  - (i) relating to the times of the day and night during which the things authorised by the licence may be provided or done,
  - (ii) allowing the Licensing Authority at any time, and as often as he may consider appropriate, after issue, to vary any term or condition of the licence, to add new terms and conditions, or to rescind the licence;
  - (iii) allowing for any change in circumstances;
  - (iv) limiting the duration of the licence to a specified period of time, or to one or more specified events or occasions.

(2) A licence granted by the Licensing Authority under section 9 shall be in writing in such form as may prescribed.

(3) A licence issued under section 7 of the Licensing and Fees Act prior to the commencement date in respect of a relevant establishment shall be deemed, following the commencement date, to have been issued on the commencement date under section 9 and such licence shall be duly amended in such terms as the Chief Minister may prescribe by notice in the Gazette.

## **Grant or refusal of applications under section 10.**

12.(1) The Licensing Authority may, in his discretion—

- (a) grant or refuse in whole or in part an application for a licence under section 10,
- (b) attach such conditions as he considers appropriate to a licence under section 10, including, but without prejudice to the generality of the foregoing, conditions—
  - (i) relating to the times of the day and night during which the things authorised by the licence may be provided or done,
  - (ii) relating to the quantity, nature, design or description of the furniture or article proposed to be the subject of a licence under section 10,
  - (iii) allowing the Licensing Authority at any time, and as often as he may consider appropriate, after issue, to vary any term or condition of the licence, to add new terms and conditions, or to rescind the licence;
  - (iv) allowing for any change in circumstances;
  - (v) limiting the duration of the licence to a specified period of time, or to one or more specified events or occasions.

(2) A licence granted by the Licensing Authority under section 10 shall be in writing in such form as may prescribed.

(3) Where a licence or consent has been given prior to the commencement date under section 250 of the Public Health Act<sup>4</sup> or any

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<sup>4</sup> 1950-07

other right or power thereunto enabling the Government, for the placing of tables and chairs in any part of the public highway or any other public place adjacent to a relevant establishment such licence or consent shall be deemed, as from the commencement date, to constitute a licence issued under section 10 and such licence shall be duly amended in such terms as the Chief Minister may prescribe by notice in the Gazette.

#### **Hours of business of licensed premises.**

13. Notwithstanding any other statutory provision or rule of law, a licence granted by the Licensing Authority under this Part may authorise and permit the holder thereof to sell food, drink or intoxicating liquor whether to be consumed on the premises or in any external area during such hours of the day or night as the Licensing Authority may decide or without restriction as to the hours.

#### **Failure to be licensed or to abide by conditions of licence.**

14.(1) Any person responsible for any act or omission contrary to section 9 to 12 shall be guilty of an offence.

(2) Any person licensed under this Part and responsible for any act or omission contrary to the terms of the licence or any condition subject to which the licence is granted shall be guilty of an offence.

(3) A person guilty of an offence contrary to this section shall be liable on summary conviction to a fine at level 4 on the standard scale.

### **PART V. COMMON PROVISIONS.**

#### **Register of licences.**

15.(1) The Licensing Authority shall cause to be kept a register of licences issued under this Act in such form and containing such particulars as may be prescribed and there shall be entered in such register the details of any licence issued and of any consent to transfer granted under this Act.

(2) The register of licences shall be available for inspection by any member of the public during such hours and in such place as may be prescribed on the payment of the prescribed fee.

#### **Issue of licences.**

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16. A licence under this Act, and any consent to the transfer of a licence endorsed thereon, may be issued under the hand of any person authorised in writing in that behalf by the Licensing Authority.

### **Period covered by licences.**

17. Every licence issued under this Act shall (subject to any provision of this Act allowing its earlier revocation) be for a period of 12 months from the date of issue.

### **Cancellation, withdrawal or revocation of licences.**

18.(1) The Licensing Authority may, in his discretion, cancel, revoke or withdraw at any time any licence issued under this Act for breach of any term or condition thereof or for any other reason and no compensation shall be payable to the licensee or any other person in respect of any such cancellation, withdrawal or revocation.

(2) Unless such licensee shall have been convicted of a breach of the provisions of this Act, the Licensing Authority may refund such proportion of the original licence fee (if any) as the unexpired period of the licence bears to the original term for which it was taken out.

### **Refund of part of licence fee upon surrender of licence.**

19. Where a licensee voluntarily surrenders his licence before the time at which it is due to expire, he shall be entitled to have refunded to him by the Licensing Authority a sum which bears to the amount he paid for the licence (if any) the same proportion as that which the unexpired period of the term of the licence bears to the whole time for which it was taken out.

### **Effect of licence not being valid.**

20. The old law shall apply to a relevant establishment at any time during which a licence issued under this Act in relation to the relevant establishment has expired, has been cancelled or revoked by the Licensing Authority, has been voluntarily surrendered by the licensee or is for any reason invalidated or not renewed.

### **Renewal.**

21. A licence granted under this Act shall be subject to renewal at the discretion of the Licensing Authority on the first and each subsequent anniversary of its issue, subject to such conditions as the Licensing Authority may deem reasonable in the circumstances.

**Duplicate licences.**

22.(1) Where any licence issued under this Act is lost, destroyed or defaced, the licence holder may make application in the prescribed form to the Licensing Authority for a duplicate of such licence, and the Licensing Authority shall, if satisfied that such licence is lost, destroyed or defaced and has not expired, issue a duplicate thereof to the licence holder.

(2) An application under this section shall be accompanied by the prescribed fee.

**Transfer of licences.**

23.(1) Licensing Authority may, if he sees fit, on the application in writing made by the proposed transferor and transferee transfer any licence issued under this Act on payment of the prescribed fee.

(2) The transferee shall, during the unexpired period for which such licence was granted, possess all the rights of the original licensee, and, shall be subject and liable as and from the date upon which the licence was transferred to him to the same duties, obligations and penalties as if such licence had been originally granted to him, and the person whose licence shall be so transferred shall cease to be licensed under such licence.

**Procedure on death of licensee.**

24.(1) Upon the death of a holder of any licence which may have been issued under this Act his legal personal representative may continue to carry on the business under the licence for the unexpired period of the licence yet to run, either personally or by an agent expressly authorised in writing by the Licensing Authority, without any renewal or formal transfer of the licence, and the legal personal representative or the agent, if one shall have been appointed, shall as to all rights and obligations be regarded as the original holder.

(2) Where a licensee dies leaving a widow surviving him, the widow shall, until probate or letters of administration shall have been duly granted and for the purposes of this section, be deemed to be his legal personal representative.

**Display of licences.**

25.(1) Where a licence is issued under this Act in respect of a relevant establishment, the licence holder shall ensure that such licence is displayed at all times in a prominent position in the establishment.

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(2) A licence holder who contravenes the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

## PART VI. FINAL PROVISIONS.

### **Licence to constitute a defence against nuisance.**

26. No statutory provision or rule of law relating to nuisance or damage applies to any person carrying out any act or omission in accordance with a licence under this Act.

### **Entry on premises and production of licences.**

27.(1) Any police officer or other person authorised in writing by the Licensing Authority (hereinafter referred to as an authorised person) may, on production of evidence of his identity and authority to any person reasonably requiring it, require any person appearing to be in charge of the establishment to give such information as he may reasonably require to enable him to ascertain whether the provisions of this Act are being complied with.

- (2) A licence holder, or a person referred to in subsection (1) who—
- (a) fails to produce a licence upon being lawfully required to do so;  
or
  - (b) hinders or obstructs an authorised person, is guilty of an offence.

### **Giving of notice.**

28. Any notice which is required to be given by this Act, other than a notice which is required to be published in the Gazette, shall be deemed to have been properly given if it has been sent by registered post to the person to whom it is directed at his last known address.

### **General penalty.**

29.(1) A person who acts in contravention of any of the provisions of this Act or any of the terms or conditions of any licence issued under the authority of this Act is guilty of an offence.

(2) A person who commits an offence against this Act for which no special penalty is provided is liable, on summary conviction to a fine at level 4 on the standard scale.

**Proceedings may be taken within three years.**

30. Any prosecution for an offence against this Act may be commenced at any time within three years after the offence was committed.

**Fees and charges recoverable summarily.**

31. Any fee, charge or other sum payable under this Act and any sum of money payable in respect of any licence under any other Act may be recoverable summarily as a civil debt.

**Regulations.**

32.(1) The Chief Minister may make regulations prescribing anything that needs to be prescribed, and making such further provision as appears to him necessary or expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Chief Minister may make regulations—

- (a) to carry out and give effect to the provisions of this Act;
- (b) to prescribe such fees in respect of such circumstances as the Chief Minister may deem appropriate.
- (c) to prescribe the maximum level of noise which may be emitted as a result of any entertainment event, and the manner in which, and the apparatus with which, such noise is to be measured and calculated.

(3) Regulations made under this section may provide for such offences and penalties therefor as the Chief Minister may deem appropriate.