

With a number of potentially significant legislative changes for the licensed trade on the horizon, we round up key licensing developments including:

- Police Reform and Social Responsibility Act –
 - Possible April commencement for a number of provisions, including changes to TENs and suspension of licences for failure to pay annual fees; and
 - Government consultation on EMROs and Levy Regulations
- Relaxation of Hours for Diamond Jubilee – What will the relaxation allow?
- Live Music Act - How can you benefit?
- Operation Condor – Licensing and SIA Inspections across London
- Tobacco Display – Amendment of Regulations
- Minimum Pricing – the Latest Developments

With the headline-grabbing introduction of EMROs and Late Night Levies, the suspension of Premises Licences for failure to pay annual fees has received much less coverage. However, this provision could have a much bigger impact on your business short-term if you do not ensure now that proper systems are in place to ensure all annual fees are paid on time.

More generally, with the festive period well and truly over, operators should start to look at key opportunities for business this year that might require an extension for licensable activities by way of Temporary Event Notice.

In terms of sporting events, the Olympics kick off at the end of July, with a number of the London events finishing between 10pm and midnight, which may well mean extra trade for licensed businesses in the vicinity of the events and wider London transport and accommodation hubs. The Paralympics follow at the end of August, again with a number of events finishing late evening. Euro 2012 starts in June, although the matches will take place early evening and are therefore likely to fall within most premises' authorised hours.

Police Reform and Social Responsibility Act 2011 ("PRSR Act") - Provisions to Commence in April 2012

As reported in previous editions of Licensing Without Hiccups, the PRSR Act contains a myriad of measures which will affect licensed premises in England and Wales. It was previously understood that only the provisions on Temporary Event Notices would come into force in April 2012, with the remainder scheduled for October and the changes to fee levels for 2013.

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However, the Home Office has now indicated that a number of the provisions will come into force on 6 April 2012, as follows:

- Suspension of Licences for failure to pay annual fees – see below
- Temporary Event Notices – see below
- Doubling the fine for persistent underage sales to £20,000 and increasing the period of voluntary closure from 2 days to a maximum of 14 days (as an alternative to a fine)
- Conditions required to be 'appropriate' for the promotion of the licensing objectives, a replacement for the existing and more stringent 'necessary' test
- Licensing Authorities and Health Authorities will become Responsible Authorities. This will mean that they are served with copies of applications and can object and/or apply for Review of Premises Licences of their own volition
- Removal of vicinity test (representations must still be relevant but it will not be a requirement that persons making representations live in the vicinity)
- Licensing Authority Policy Statements will be renewable every 5 years, as opposed to the current tri-annual renewal

Neither the Regulations nor the amended Guidance dealing with the detail of these changes have yet been published by the Home Office. Therefore it may still be the case that implementation of some of these measures will be delayed beyond April. However, given the Home Office's proposed timetable, operators should certainly prepare now, particularly in relation to the suspension of Premises Licences for failure to pay annual fees and on a more positive note, for greater opportunities to cover one off events on an extended basis.

Suspension of Premises Licences for Failure to Pay Annual Fees

The Act provides that where a licence holder has failed to pay an annual fee that is due, a Licensing Authority must suspend the Premises Licence unless the failure is due to an administrative error or the licence holder has notified the authority that they dispute liability for the fee and it is still within the 'grace period', which will be 21 days.

"Where a licence holder has failed to pay an annual fee that is due, a Licensing Authority must suspend the Premises Licence"



A suspension of a Licence would be catastrophic for many businesses in terms of lost revenue so it will be essential to ensure that the payment of annual fees is dealt with efficiently and promptly. Regardless of potential inefficiencies at Licensing Authority level in relation to invoicing and receipts, the position is clear: if you do not pay your annual fee by the due date, your Premises Licence must be suspended. At that time, any provision of licensable activities would be unlawful, as it is an offence to provide licensable activities otherwise than in accordance with an authorisation, punishable by a fine of up to £20,000 and/ or up to 6 months imprisonment.

To prepare for the changes, all operators must work now to ensure proper systems are in place to pay annual fees no later than their due date. For larger estates, one option might be to pay all annual fees on a specific date nationally, if the relevant Licensing Authorities will agree. This may mean that a number are paid in advance of their due date in the first year, but it would at least give more certainty as to payment dates going forward.

Alternatively, the due date for all premises should be verified now so that payments can be scheduled in good time, as not all licensing authorities issue invoices in the same way. In our experience, some authorities issue invoices in advance, some issue invoices only on the due date and some do not issue invoices at all. Therefore, you must be pro-active to ensure the suspension provisions do not affect your continuity of trade.

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As set out above, the amended Guidance detailing how this scheme will work in practice has not yet been published by the Home Office. The Guidance will hopefully contain further details as to when the suspension would have effect (it is not clear whether this would be immediate and automatic, or whether a notice would be required); whether the power to suspend will also cover historical overdue fees; and whether payment will mean immediate reinstatement. However, in the meantime, prevention is better than cure and therefore it is advisable in all circumstances to ensure fee payments are made by their due date.

Temporary Event Notices (TENs)

There are various proposed changes to the TEN regime. The good news is:

- Time limits will be relaxed allowing one event to last for up to 168 hours i.e. 7 days (as opposed to the current limit of 96 hours i.e. 4 days) and allowing a maximum aggregate of 21 days per annum (as opposed to the current limit of 15).
- Late notices will be permitted, up to 5 working days before the event period begins (although there will be maximum numbers of late TEN applications per person per annum).

The bad news is:

- Environmental Health Officers (EHOs) will be entitled to object to the application on the grounds of any of the licensing objectives, including nuisance (it is currently only the Police who can object, on the basis of Crime and Disorder).
- Conditions may be imposed on any TEN if the Licensing Authority considers it ‘appropriate’ to do so.

Police Reform and Social Responsibility Act 2011 – Consultation on EMROs and the Levy

The Home Office has indicated that the provisions on Early Morning Restriction Orders (“EMROs”) and the Late Night Levy (“the Levy”) are likely to come into force in October 2012. They are currently consulting on regulations which will govern the procedure required for Licensing Authorities to introduce an EMRO and the categories of exemption that will be available. In relation to the Levy, they are again seeking views on the procedure required for Licensing Authorities to introduce the Levy in their area and the categories of exemption that will be available. They are also consulting on proposed categories of reduction in payment, which would be available to Licensing Authorities to promote best practice schemes.

As previously reported, under the PRSR Act a Licensing Authority can make an EMRO to apply anywhere between midnight and 6am if it considers that such an Order is appropriate for the promotion of the licensing objectives. If such an Order is made, operators will not be able to serve alcohol during the period of the Order regardless of the hours authorised under their Licence/ Certificate / Temporary Event Notice.

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The proposed consultation procedure includes only 28 days for businesses who will be affected to submit representations to the Licensing Authority, if the Authority proposes an EMRO in their area. The exemptions currently proposed are very narrow, being premises with overnight accommodation, but only where the Premises Licence has a condition restricting sales of alcohol to hotel residents; theatres and cinemas, where there is a condition restricting sales to ticket holders or participants; community premises; and casinos and bingo halls with a membership scheme.

The power for Licensing Authorities to apply a “Late Night Levy” is also included in the Act. If an Authority decide to introduce the Levy, it will apply to the whole of their jurisdiction and will be payable by all licence holders with a Premises Licence (or Club Premises Certificate) which authorises the sale of alcohol during the ‘late night supply period’. The relevant period will be defined by the Authority, but can be anywhere between the times of midnight and 6am.

It is important to note that it does not matter if you do not open during the supply period – if your Licence authorises you to open, you will have to pay the Levy unless you fall within an exemption category applied by the Authority. On that basis, operators that have later hours for flexibility only, may wish to vary their Licences to avoid the relevant hours, if the Authority apply a Levy in their area. One piece of good news is that the Consultation proposes an exemption for New Year’s Eve, which has 24 hour authorisation on the vast majority of Licences, carried over from the previous regime.



“If your Licence authorises you to open, you will have to pay the Levy unless you fall within an exemption category”

It is proposed that the regulations for the Levy will include a 12 week consultation period with all affected parties if an Authority proposes to introduce a Levy, but there will be no hearing and no statutory right of appeal if they ultimately decide to introduce it.

The proposed exemption categories for the Levy are again narrow, being premises with overnight accommodation, but only where the Premises Licence has a condition restricting sales of alcohol to hotel residents; restaurants, but only where there are conditions making clear their status as restaurants, for example conditions requiring that alcohol is only supplied to and consumed by persons as an ancillary to their meal; theatres and cinemas, where there is a condition restricting sales to ticket holders or participants; casinos and bingo halls with a membership scheme; Community Amateur Sports Clubs; Community Premises; and country village pubs (defined as premises within a rural settlement with a population of less than 3000).

It is proposed that Licensing Authorities should be able to ask for a reduced levy payment from businesses participating in Best Bar None; a local Pubwatch, Clubwatch, or Shopwatch scheme; Community Alcohol Partnerships; and premises that pay a levy in Business Improvement Districts. A 10% discount is proposed for every relevant best practice scheme, up to a maximum of 30%.

A recent survey of Licensing Officers has shown that a relatively small number are currently considering applying an EMRO or Levy in their area. Approximately 50% have apparently not even considered the matter yet. However, despite the Officers' apparent reluctance to introduce these measures, they may well face political pressure from Committee Members and Chief Officers of Police, to satisfy constituents and police budgetary pressure.

The deadline for responses to the Consultation is 10 April 2012. Please do take the time to respond to the consultation if EMROs and the Levy could potentially affect your business. A link to the Consultation is attached.

<http://www.homeoffice.gov.uk/publications/about-us/consultations/late-night-drinking/>

Relaxation of Hours for Queen's Diamond Jubilee – What will the Relaxation Allow?

The Order for the relaxation of licensing hours for the Diamond Jubilee has been approved by both Houses of Parliament, although it still awaits the official sign off by Lord Henley.

The Order provides for Premises Licences to be extended for the period of 2 hours beginning at 11pm on Friday 1 June and Saturday 2 June 2012 (i.e until 1am on the mornings of 2 and 3 June respectively). This extension will apply for on-sales of alcohol and entertainment.

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If premises are authorised for the sale of alcohol for consumption on the premises, the Order will also extend late night refreshment until 1am. However, if a premises sells hot food and hot drink only, no extension to allow late night refreshment until 1am (without alcohol) will apply.

The Order does not apply to Premises Licences which just authorise sales of alcohol for consumption off the premises.

Temporary Event Notices can, of course, be used if you wish to extend your hours for any or all licensable activities beyond 1am, or on the evening of Sunday the 3rd or Monday the 4th of June, or if you want to extend late night refreshment only beyond the times on your Premises Licence. Please contact us for further advice and/ or to make any applications.

Live Music Act – How Can You Benefit?

The Live Music Act received Royal Assent on 8 March. The provisions in the Act promote live music, both amplified and unamplified; and can benefit operators who want more flexibility to allow live music on their premises.

As reported in previous issues of Licensing Without Hiccups, the key change for licence-holders is that amplified live music will not need to be licensed in premises authorised for on- sales of alcohol for audiences of up to 200 persons between 8am and 11pm.

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This means that if you wish to hold live amplified music within these time-frames for small audiences, you will no longer need to apply for a Temporary Event Notice, or variation to your Premises Licence, so long as the entertainment will take place when you are open for the purposes of on-sales of alcohol.

Any conditions on existing Premises Licences relating to music will not apply to live music which meets the test (i.e. for up to 200 persons between 8am and 11pm), although compliance may still be advisable to prevent potential disturbance of neighbouring residents, because nuisance could still result in a review of your Premises Licence. Indeed, any conditions relating to live music added on a review are specifically stated to apply, despite the general exemption.

Live amplified music may also be provided in workplaces, such as offices or factories, if it is between 8am and 11pm and for an audience of less than 200. The exemption only applies if that workplace does not hold a Premises Licence, or if its Premises Licence only



authorises late night refreshment. This restriction is a little bizarre, as if there is a Premises Licence authorising on-sales of alcohol within a work place, the exemption for licensed venues would apply to the workplace in any event.

There is a separate exemption for live unamplified music which takes place between 8am and 11pm, without a specification as to audience numbers and regardless of whether or not it takes place on alcohol-licensed premises. Therefore, premises that are not licensed at all, or are licensed only for late night refreshment, will be able to provide unamplified live music during these times with no requirement for a separate authorisation.

“There is a separate exemption for live unamplified music which takes place between 8am and 11pm”

However, please bear in mind that one thing that hasn't changed is the requirement for copyright licences. All playing of music in “public” (which for these purposes means audible by more than one person, even if those persons are all staff) requires licences issued by PPL and/ or PRS as appropriate, whether they are amplified or unamplified.

PRS deal with the copyright in the music/ lyrics of a song and therefore a PRS licence is required for both live and recorded music. PPL deal with the copyright in the sound recording and therefore a PPL licence will only be required for the playing of recorded music.

Operation Condor – Licensing and SIA Inspections across London

The Publican's Morning Advertiser reported on 27 February that twelve pubs and clubs in London had been closed the preceding weekend as part of a police operation to crackdown on licensing breaches. We understand that ‘Operation Condor’ involved all London Boroughs, with almost 5,000 premises visited, over 650 breaches identified and a number of people arrested.

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On 6 March, it was reported that more than 190 door supervisors were also inspected during the London borough-wide police operation, supported by the Security Industry Authority (SIA). The SIA supported inspections took place at 72 licensed venues in eight boroughs: Barking and Dagenham, Barnet, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Kensington and Chelsea, Lewisham, Southwark and Westminster. Out of the 194 door staff, it is reported that 193 individuals were working legally by holding a valid SIA licence. One unlicensed door supervisor was found working at a bar in Hackney. However, the SIA issued warnings to 30 people for breaking licence conditions, which included failing to display the SIA licence whilst on duty, failing to notify the SIA of a change of address and failing to notify the SIA of criminality.

‘Operation Condor’ acts as a timely reminder that unannounced inspections can and do take place. Similar operations may follow in other Cities and all operators should be able to evidence robust due diligence procedures to prevent the commission of an offence, either under the Licensing Act, or under the SIA regime.

Tobacco Display – Amendment of Regulations

The proposed size of temporary displays of tobacco allowed when serving customers and re-stocking has been increased to 1.5 square metres. Previously, the exemption was drafted to restrict the area to a maximum of 0.75 square metres, so the relevant area has been doubled.

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The prohibition on displays of tobacco (except for the specified exemptions) will be in force in England for large shops (other than bulk tobacconists and specialist tobacconists) on 6 April 2012. The date for implementation in Wales and for shops with a shop floor area of less than 280 square metres, has not yet been appointed. However, the regulations containing the exemptions for temporary displays does not come into force until 1 October 2013 for smaller premises. Therefore, the prohibition will be no earlier than that.

Minimum Pricing – the Latest Developments

The Financial Times reported on 9 March that David Cameron is planning to abandon the proposal to introduce a minimum price for alcohol of duty plus VAT. A Consultation setting out a new minimum price for alcohol of 40p to 50p per unit is anticipated to be announced around budget time.

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