

Welcome to our round up of key licensing issues and developments. This month, highlights include:

- Live Music Act 2012 – due to come into force on 1 October, the Live Music Act exempts live music from the requirement for licensing in certain circumstances. The DCMS are currently consulting on proposed amended Guidance dealing with the changes. We set out the key considerations for your business.
- Government Alcohol Strategy on Minimum Pricing in England and Wales – we consider the key points raised by the House of Commons Health Committee in their report on the Strategy, published in July, including their views on a proposed ban on multi-buy promotions in shops and supermarkets.
- PPL Consultation on Draft Codes of Conduct for Licensees and Members – due to be finalised in November 2012.
- Plastic Glasses and Bottles (Mandatory Use) Bill 2012-13 – Private Members Bill on mandatory use of plastic receptacles had its first reading in Parliament on 4 September 2012.
- Islington Late Night Levy proposal – reports suggest that Islington Council is already considering the imposition of a late night levy.

If you have any queries about any of the highlights in this month's review, or if you need any advice on your licensing requirements, applications, or procedures, please contact us. We can assist with drafting and submission of applications, contested hearings, audits and advice on procedures, policies and/ or training, prosecutions or licence reviews.

Live Music Act 2012 – 1 October Commencement

The Live Music Act received Royal Assent on 8 March and will come into force on 1 October 2012. The Act will remove the requirement for live music to be licensed in certain circumstances and where the criteria are met, existing conditions on Licences which relate solely to the provision of live music (as opposed to live and recorded music or only recorded music) will be of nil effect unless and until conditions are re-activated or imposed at a review hearing.

The DCMS are consulting on proposed changes to the Guidance under the Licensing Act to reflect the new exemptions for live music.

This is a technical consultation only i.e. to ensure that the Guidance is accurate, helpful and practical. It will not and cannot alter the substance of the legislation. However, the draft Guidance is useful in that it clearly sets out where live music will remain licensable as follows:

- Where a performance of live music, whether amplified or unamplified, takes place at any time other than between 08.00 and 23.00 on any day i.e. live music on until midnight would be licensable, even if the other conditions were met;
- Where a performance of amplified live music takes place at relevant licensed premises, or workplaces, in the presence of an audience of more than 200 people;
- Where a performance of amplified live music takes place other than on premises licensed for on-sales of alcohol;
- Where a performance of amplified live music takes place at relevant licensed premises at a time when those premises are not open for the purposes of on-sales of alcohol. Therefore, if a pub, restaurant, or hotel is open for breakfast at 8am, but is not authorised to sell alcohol until 10am, amplified live music between 8am and 10am would still require licensing; or
- Where a licensing authority intentionally removes the effect of the deregulation when imposing a condition on a premises licence or certificate as a result of a licence review.



These clarifications essentially underline what the exemptions actually are and perhaps more importantly, what they are not. As reported in previous editions of our Review, 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. 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.

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.

It is worth bearing in mind though, 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 copyright licences issued by PPL and/ or PRS as appropriate, whether they are amplified or unamplified (although live music will only require a PRS license).

The Live Music Act is undoubtedly good news for the on-licensed trade and will hopefully encourage more live music acts at grass roots level. It is a rare example of de-regulation for an industry that is increasingly regulated. However, the application of the exemptions may well be more difficult than it first seems. For example, the draft Guidance states that “a DJ who is merely playing tracks would not be a performance of live music, but might if he or she was performing a set which largely consisted of mixing recorded music to create new sounds”. It also notes the potential difficulty in determining whether existing licence conditions will be suspended, for example a condition stating “during Regulated Entertainment all doors and windows must remain closed” would still apply unless the only entertainment provided was live music between 08.00 and 23.00 to an audience of 200 or less.



Minimum Pricing- Report of House of Commons Health Committee July 2012

The Home Office has set a target date of implementing minimum unit pricing for alcohol by October 2014 in its Business Plan 2012-2015. In the Alcohol Strategy, the Government states “We will introduce a minimum unit price for alcohol meaning that, for the first time ever in England and Wales, alcohol will not be allowed to be sold below a certain defined price”. Although the Strategy document itself does not propose a minimum unit price, the Prime Minister states in the introduction that a minimum price of 40p “could mean 50,000 fewer crimes and 900 fewer alcohol-related deaths a year by the end of the decade”. This gives an indication of level a minimum price could be set at in England and Wales.

There is, of course, already a Scottish Parliament Bill, which received Royal Assent on 29 June 2012. This establishes a minimum price of 50p per unit. It is anticipated that implementation may start in April 2013, although the BBC reported in July that the Scotch Whisky Association has said that it will challenge the legislation and has reportedly lodged a formal complaint to the European Commission and will seek a judicial review of minimum unit pricing for alcohol in the Court of Session in Edinburgh.

The House of Commons Health Committee has considered written evidence submitted to them in relation to the Strategy of the Government for minimum pricing in England and Wales and published its Report of Session 2012-2013 in July. The Report notes that the “Committee welcomes the Government’s decision to introduce a minimum unit price for alcohol”. However, the Report does make several important points in relation to the proposals:

- The Office of Fair Trading has noted that there is a clear difference between a voluntary agreement between retailers to agree prices, which would almost certainly infringe the Competition Act and European competition law; and a proposal for a statutory minimum price unilaterally imposed by government. However, it has also pointed out that there may be constraints on minimum pricing legislation arising from wider European law, for example it may raise issues of compatibility with European free movement rules. Obviously, any legal action in relation to the Scottish Bill would clarify this.
- The Scottish Parliament Bill provides that the ability to set a minimum unit price will expire after 6 years, unless Ministers specifically make an Order to continue it. Any such Order may only be made in the sixth year. The Committee recommends that there should be a similar ‘sunset clause’ on any provisions for setting a minimum unit price for alcohol in England and Wales.
- The Government has presented little evidence about the specific effects anticipated from different levels of minimum price. The Report of the Committee urges the Government to establish direct links between specific alcohol products and specific alcohol-related harms; between different levels of minimum unit price and the resulting selling prices for the products which are linked to alcohol-related harms; and the likely effect of different levels of selling prices for those products on demand in the target households.

- The debate so far has been restricted to whether the level of the minimum price should be set at 40, 45 or 50 pence. However, there needs to be a mechanism to monitor and adjust the level over time. The Committee suggests that the establishment of an advisory body to analyse evidence and make recommendations may be an appropriate mechanism. It is important to ensure that whatever method is chosen should be used when setting the initial level of price as well, to ensure that the price is evidence-based from the outset.
- The Government Strategy states that they will consult on a proposed ban on multi-buy promotions of alcohol in shops and supermarkets. This ban would have effect so that multiple bottles or cans could not be sold cheaper than the total cost if each bottle or can was sold separately. Such a ban has been in force in Scotland since 1 October 2011. However, on the evidence presented, the Committee reports that it is not convinced that such a ban would be desirable or workable – it believes that such a proposal would create opportunities for retailers to find work-arounds which would “invite ridicule and bring the wider policy objective into disrepute”. It seems to have reached this conclusion on the basis of the Scottish experience, where multi-buys were replaced by legal price reduction promotions and online purchasing of alcohol from distribution centres outside of the Scottish jurisdiction was encouraged.

The Government Consultation programme for Autumn 2012 is likely to include further debate on minimum pricing and no doubt a watchful eye will be kept on any challenge to the Scottish legislation.

PPL Consultation on Draft Codes of Conduct for Licensees and Members

PPL, one of the bodies which collects copyright royalties for the public playing of music (along with PRS) has launched a consultation on Draft Codes of Conduct, due to be finalised in November 2012. The draft Code for Licensees includes general information about PPL; the status of the Code; their Customer Service; tariffs and licences; and comments, feedback and complaints.

The Code is drafted to comply with the British Copyright Council's Principles for Collective Rights Management Organisations' Codes of Conduct. This is a voluntary, self – regulatory framework to establish a set of principles of good practice as the basis for Codes of Conduct. It does not have statutory force.

The draft Code states PPL commit to acting in accordance with certain standards of service, promptly, transparently, fairly and consistently, with respect for personal information and in accordance with the Code. However, it does not seem that the Code will alter how PPL actually deal with businesses on a day to basis.

The Code clearly states

“Where we believe in good faith, based on the information available to us about the use of recorded music at your business, that you require a PPL licence, we will follow up with you, to help you put the appropriate licence in place for your business. If we believe we have the necessary information to determine the applicable PPL tariff(s) and calculate your licence fee, we will send out an invoice accompanied by explanatory information and details of how to contact us if you have any queries or if anything is incorrect.”

Our clients often express that the most frustrating aspect of their dealings with PPL is that they will unilaterally send invoices out based on incorrect or incomplete information with unclear explanations as to how and why the calculations have been made. The draft Code does not appear to deal with those concerns.

PPL have, of course, also consulted recently on their tariff for specially featured entertainment. If you have any queries or comments on either of the consultations, please contact us.

Plastic Glasses and Bottles (Mandatory Use) Bill 2012-13

This Private Members Bill on the mandatory use of plastic receptacles had its first reading in Parliament on 4 September 2012 and is expected to have its second reading debate on 26 October.

The Bill was introduced to Parliament under the Ten Minute Rule, which allows an MP to make his or her case for a new bill in a speech lasting up to ten minutes. Private Member's Bills are often not printed until close to the second reading debate and the text of this Bill is not yet available.

However, records of the debate on 4 September show that the Bill would require the Government to work with local authorities and licensing authorities to make the use of polycarbonate bottles as a replacement for glass bottles mandatory in premises with a history of violent incidents.

It is, of course, the case that many Private Member's Bills do not make the statute book. Opposition to the Bill during its first reading pointed out a number of flaws with the proposal (basically indicating that banning potentially dangerous items does not deal with the root cause of the problem, pointing out the difficulties of implementation, drinks which only come in glass bottles such as champagne and that there are many other potentially dangerous items such as glass tables and cutlery). This Bill may well be unlikely to proceed.



Islington Late Night Levy?

Press reports suggest that Islington Council is already considering the imposition of a late night levy, following comments by Islington Councillor, Paul Convery, executive member for community safety.

As reported in our last Review, the Levy is due to come into force in October under the Police Reform and Social Responsibility Act 2011. It will allow Licensing Authorities to impose a levy for sales of alcohol between midnight and 6am. Specific consultations on the imposition of a levy cannot take place until the legislation is in force. However, Councillor Convery's comment that "We've got to find a way of meeting the costs of [regulating licensed premises and managing the after effects] and so we'll be including our commitment to adopting the late night levy in our new licensing policy" gives a very clear indication that they will do so.

This latest story follows earlier indications from Woking and Northampton Licensing Authorities. Woking Council actually issued a consultation document with responses requested by June 2012, but later withdrew it, following comments that no consultation should have taken place until the provisions are in force. In a report to the local licensing committee, Northampton Borough Council outlined the town's 178 businesses that would be affected by the levy, and claimed that £160,000 could be raised by implementing the measure.

We will report on the amended sections to the Guidance dealing with the Levy on publication. It is anticipated that the Guidance will be issued on 31 October i.e. the date that the provisions come into force.

Comments

If you have any comments or queries on any of the articles covered in this month's newsletter, please let us know.

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