

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

- World Cup 2014 – Temporary Event Notices Required?
- Consultation on Licence Fees Including Proposed Cap Levels
- Update on EMRO and Levy Consultations and Considerations
- Ban on 'Below-Cost' Sale of Alcohol – Home Office Guidance
- Licensing External Areas in Readiness for Summer
- Increasing Consumer Awareness of Hygiene Ratings – is Prevention Better than Cure?

If you have any queries about any of the highlights in this issue'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. We can also provide tailored advice on what legislation changes will mean for your business.

Personal Licence Update

We reported in our last edition that the Government were consulting on the future of personal licences. The Consultation document proposed the abolition of the personal licence regime altogether and made it clear that the Home Office does not consider that renewal of licences every 10 years is an effective and proportionate way of tackling crime and disorder. They have therefore committed to removing that requirement. The responses to the Consultation have not yet been published and therefore the future of personal licences is still not clear. With the first lot of renewals potentially due from November 2014 (i.e. 3 months prior to the 10 year anniversary of the first grants in February 2005), we would advise that businesses start to consider how renewals will be managed, if the renewal requirements are not removed by the Government in time. It is interesting to note that in the recent fee consultation, they have included a proposed cap level for the grant or renewal of a personal licence.

World Cup 2014 – Temporary Event Notices Required?

The World Cup 2014 'kicks off' in Brazil on 12 June. Brazil is four hours behind UK time and therefore a number of matches will be televised in the UK late in the evening. You may therefore want to extend your opening hours either for the matches themselves, or for post-match festivities.

The Home Office rejected the British Beer and Pub Association's request to automatically extend opening hours for England's World Cup matches. Although David Cameron announced via Twitter that he wanted the Home Office to consult further on this, there is certainly no guarantee at this stage that there will be a relaxation on hours.

Therefore, if extended opening for the World Cup is part of your business plan for the summer, we would advise that you apply for Temporary Event Notices for your chosen dates and times sooner rather than later. If those applications are successful, you will then have certainty over the hours you will be permitted to trade.

The times for all matches are detailed on [Fifa's website](#). In the UK, the first England match kicks off on Saturday 14 June, against Italy, kicks off at 11 p.m. Their next match is on 19 June against Uruguay and kicks off at 8 p.m. On 24 June, their match against Costa Rica starts at 5 p.m. UK time. After the Group stage, all matches start at either 5 p.m. or 9 p.m., with the final kicking off at 8 p.m.

We can help you with any proposed applications for Temporary Event Notices, or indeed to permanently vary the hours permitted under your licence. Unfortunately, though, we cannot influence whether England reach the final!

Consultation on Licence Fees

On 13 February, the Home Office published a consultation on fees under the Licensing Act 2003 in England and Wales. The deadline for responses is 10 April.

The power for the Home Secretary to prescribe that fee levels should be set locally by licensing authorities, subject to a national cap, was introduced under the Police Reform and Social Responsibility Act 2011. The proposals are in stark contrast to the current system of licence fees which are set nationally, with the level of fee payable for some applications depending on the rateable value of the relevant premises. National fee levels have not increased at all since the Licensing Act first came into force in 2005.

However, those who recall the good old days of public entertainment licences will no doubt remember that fees for those licences were significantly more for some licensing authorities than current fee levels under the Licensing Act 2003.



The Proposals

The Consultation document invites views on a number of specific aspects of the regulations that will introduce locally-set fees including:

- 1 Whether fee ‘bands’ should continue to be based on non-domestic rateable value (the intention of the Government is to abandon the use of rateable value as a basis for variable fee amounts).
- 2 Whether the basis on which fees are determined should include new discretionary powers for local authorities to apply higher fee amounts if the premises are:
 - Authorised to provide licensable activities until a ‘late’ terminal hour (to be set by the local authority, proposed to be between midnight and 6 a.m.); and/ or
 - Used exclusively or primarily for the sale of alcohol for consumption on the premises.

However, it is proposed that the authority will only be able to adopt higher fees for these categories if there is evidence that these factors are linked to costs. It is also proposed that local authorities should have discretion to exclude certain classes of premises from liability for the higher amount, such as accommodation providers, theatres and cinemas, bingo halls, community amateur sports clubs and community premises.

- 3 The proposed cap levels that will apply to each fee category (see table). These will be maximum fee levels, although actual fees must be determined by each authority on a cost recovery basis, so they are very likely to vary from authority to authority.
- 4 Guidance on setting fees and efficiency to guard against excessive costs and ‘gold plating’ e.g. notifying residents of applications individually by letter, which is common practice for some Councils, but goes above and beyond the requirements of the Act. It is not clear whether this will cover the practice by certain Responsible Authorities of always putting in a ‘holding’ objection to allow them further time to consider the application.
- 5 Whether there should be a single national annual fee date, although it is not proposed to implement this change until a later date.

The proposals aim to allow licensing authorities to recover their costs for carrying out their functions under the Licensing Act 2003. However, recent case law in relation to sexual entertainment venues indicates that calculations of cost by the licensing authority must not include the cost of enforcing against unlicensed operators (*R (on the application of Hemming & Others v Westminster* [2013] EWCA Civ 591).

In fact, the Consultation makes clear that the costs of inspection, monitoring, compliance or enforcement should not be recovered by way of licence fees. However, the costs of the licensing authority exercising functions as a responsible authority (in terms of considering applications and making representations) could be recovered. This would include not only the licensing team but bodies such as Environmental Health, Trading Standards and planning, as these are constituent parts of the local authority who will incur administrative costs for considering and responding to applications.

It is interesting to note that the proposals include a power to impose higher fees for ‘late’ licences. If introduced, this will mean that operators effectively pay a penalty if their licence authorises later hours, even if there is no official ‘late night levy’ – does this represent a levy by the back door?

Cap Levels

The cap levels represent a five-fold increase on existing fee levels for a number of applications. We set out below the proposed caps for a number of applications, together with the existing fee levels for comparison purposes.

It should be noted there is, as yet, no firm proposed cap for Temporary Event Notice (TEN) applications as the Home Office is inviting evidence as to TEN costs, although the Consultation suggests a working figure of £100.

Premises Applications/ Notifications

Application	Current Fee (£) (Top Bracket RV Where Applicable)	Proposed Cap (£)
Grant or Variation of Premises Licence	635 or 1,905 if premises used exclusively or primarily for the supply of alcohol for consumption on the premises	2,400*
Annual Fee	350 or 1,050 if premises used exclusively or primarily for the supply of alcohol for consumption on the premises	740*
Minor Variation	89	244
Variation of DPS	23	105
Interim Authority	23	114
Transfer	23	65
Duplicate Licence	10.50	46
Change name / address	10.50	46
Temporary Event Notice (TEN)	21	100?
Duplicate TEN	10.50	38

* The maximum figures quoted for the current fee for premises used exclusively or primarily for the sale of alcohol are potentially a little misleading, as it seems that the new proposed cap levels could potentially be for any premises (although the local authority will have a discretion as to whether to distinguish premises with ‘late’ licences or premises exclusively or primarily used for the sale of alcohol).



Personal Licence Applications/ Notifications

Application	Current Fee (£)	Proposed Cap (£)
Grant or Renewal of Personal Licence	37	114
Duplicate Licence	10.50	59
Change name / address	10.50	59

Budgeting

Whilst cap levels are in theory a **maximum** amount, it is very difficult (if not impossible) for any business to calculate what level each local authority's fees will need to be set at to recover their licensing costs. It is equally difficult to anticipate which local authorities would seek a higher fee for 'late' licences and/or premises exclusively or primarily for the sale of alcohol; and indeed what would be classed as 'late' (this could be anywhere between midnight and 6 a.m. on the current proposals).

Therefore, for budgeting purposes, the only real indication of licence fees for the coming years at this stage will be the proposed cap levels set out within the Consultation. These calculations could prove to be startling given the very considerable increases from current fee levels for a number of applications.

The Consultation ends on 10 April and thereafter a summary of the responses to the Consultation will be published by the Home Office. Regulations will need to be approved and Local Authorities will need to calculate the fees that will apply in their area on a cost recovery basis. Therefore, it is unlikely that the new fees will apply before summer, but there is no clear timescale for implementation at this stage.

Emro and Levy Update

Early Morning Restriction Orders (EMROs)

Blackpool's proposed EMRO between 3 a.m. and 6 a.m. has now been rejected by the Council. Manchester City Council also recently rejected proposals for an EMRO in the Manchester's Canal Street gay village.

Currently, the only outstanding EMRO consultation is Lambeth's. We reported in our last issue that Lambeth had launched a consultation to introduce an EMRO for an area covering part of Wandsworth Road and North Street in Clapham. However, the hearing has been deferred to allow more time for businesses and residents opposed to the measure to give evidence.

Late Night Levy

In December, Cheltenham became the second Council to adopt a late night levy, which will apply from 1 April 2014 for premises authorised to sell alcohol between midnight and 6 a.m. The first Council to implement the Levy was Newcastle-upon-Tyne.

A decision will be made on Islington's proposals for a levy at a council meeting on 27 February 2014.

We reported in our last issue that Leeds City Council was proposing to consult on a levy for sales of alcohol between 12:30 a.m. and 6 a.m. This proposal has been rejected by the Council's Executive Board.

Banning Sales of Alcohol Below Cost Price

Background

The Home Office have announced that, subject to parliamentary approval, a ban on the sale of alcohol below the price of alcohol duty plus VAT will come into force on 6 April 2014.

The ban will apply to all alcohol-licensed premises including those with off sales only such as shops and supermarkets and online internet sales, as well as on-licensed premises such as bars, restaurants and hotels. However, in reality, the 'minimum cost' prices are likely to affect a much greater proportion of premises licensed for off-sales only.

If implemented, the below-cost ban will become a mandatory condition on all relevant premises licences and will be enforced by licensing authorities, Trading Standards and/or the police. Breach of a mandatory condition is, of course, an offence under the Licensing Act 2003, punishable by a fine of up to £20,000 and/or up to six months' imprisonment.

Guidance issued by the Home Office on 4 February 2014 makes clear that the 'cost' price will be calculated by taking the relevant excise duty figure for a particular product (i.e. beer; spirits, spirit-based ready to drinks, wine and made-wine exceeding 22% ABV; and wine, made-wine and cider not exceeding 22% ABV) and then applying the current rate of VAT to that price. There are different duty rates within each of the categories of beer and wine and cider.

Minimum Price Levels

The Guidance contains a list of the permitted 'cost' prices for the most common types of alcoholic products at current duty and VAT rates including, by way of example:

Product	Size	ABV (%)	Permitted Price (Duty + VAT)
Beer / Lager	440ml	4	41 pence
Beer / Lager	568ml (pint)	5	66 pence
Sparkling Cider and Perry	2 litre	7.5	£6.20
Wine	750ml	11.5	£2.41
Spirits	70cl	40	£9.49
Spirits	1 litre	40	£13.55

Potential Pitfalls

There are potentially a number of pitfalls for businesses in implementing this ban including:

- 1. Product Ranges/ Customer Demand.** Current prices for stronger products may well be affected by these changes, particularly in the off-trade. Two litre bottles of strong cider, for example, can sell for less than £3 currently. Going forwards, the sale of 2 litre bottles of 7.5% cider would be banned at below £6.20 (at current duty and VAT rates) as per the indicative table of permitted prices above. Product ranges may need to be reviewed in advance to take account of the potential effect of these price changes on customer demand.

2. Changes to Duty Rates. Duty rates generally change each year, normally following the Budget, and therefore the calculation of 'cost' prices will also change frequently. Revised duty rates usually take effect around five days after the Budget is announced and the Guidance states that businesses will need to implement changes to their pricing systems within 14 calendar days of the new rate being implemented to ensure compliance with the Mandatory Condition. Timescales will therefore be tight to calculate and adjust all relevant prices and associated shelf labels. Businesses are, of course, familiar with dealing with price changes within a short timeframe following Budgets, but this legislation would mean an extra calculation is required to determine the permitted minimum price.

3. Multipack Products. Multipacks of alcohol such as cans of beer will still be permitted, but the price will need to be above the aggregate permitted price of each product in the multipack. For example, a 24 pack of 440ml cans of 4% lager will need to be sold at a minimum price of £9.84 at current rates (24 x 41 pence).

4. Multi-buy promotions on alcohol. For multi-buy promotions, such as 'buy one get one free', businesses will need to ensure that the total purchase price for the package of products is not below the aggregate of the duty plus VAT permitted price for each product included in the package. Therefore, all alcohol promotions will need to be considered and calculated in advance. Using the example above for 24 packs of lager, it will be impossible to sell as a promotion 2 packs for any less than £19.68 (2 x £9.84).

This issue will again be less relevant to on-licensed premises, as existing Mandatory Conditions already prevent 'irresponsible promotions' for on licences, which includes the provision of free or discounted alcohol as a prize to encourage or reward the purchase and consumption of alcohol, if the promotion is carried on in a manner which carries a significant risk of leading to crime and disorder, prejudice to public safety, public nuisance, or harm to children.

5. Multi-buy promotions including other products. Multi-buy promotions including alcohol as a package with other products are becoming more frequent in shops and supermarkets – for example, 'meal deals' with a bottle of wine, main course and desert for a fixed price on special occasions such as Valentine's Day, or a bottle of wine sold with a bunch of flowers. The banning on the sale of alcohol below cost price will mean that the selling price of the deal as a whole must not be below the duty plus VAT price of the alcoholic product.

This will also apply to pubs, restaurants and cafés where a bottle of wine or a pint of beer is included in a set-price table meal – the total cost of the table meal must be at or above the permitted price of the wine or beer, although in reality it is likely that any such meal deal in a restaurant or pub will be above the permitted price (at current duty levels the minimum price for a bottle of 11.5% wine would be £2.41)

We would advise that you review your product ranges and current prices now to determine the products that are likely to be affected by the ban. It may also be sensible to discuss the implications for the pricing of multipacks and promotions with your marketing teams in advance. Please contact us if you would like any further advice.

Licensing External Areas In Readiness For Summer

If you are hoping that last summer's prolonged hot weather will be repeated this year, you may be considering making use of your external areas, or an adjacent highway, as an additional 'continental-style' seating area to attract customers. There are potentially a number of hurdles you will need to consider to ensure that your use of such an area is lawful including:

- 1 Is the external area on your demise, or part of the highway? If it is on the highway, you may need to obtain a street café/pavement licence from the local authority. This will usually involve preparing and submitting plans showing the relevant area including the remaining width of the footway.
- 2 Is the external area within seven metres of a road or footway? If so, you may need to obtain a street trading licence, even if the area is part of your own demise. However, some authorities will not allow street trading in certain streets. If this is the case for your authority, it will not even be possible to apply for authority to 'trade'.
- 3 Do you have planning permission to use the relevant area? For certain authorities, you will need to provide evidence that planning consent is in place before you can apply for a pavement/street café licence. You may also need to prove you have consent from the owner if the land is not part of your demise.
- 4 Is the area covered under your premises licence? If not, although the consumption of alcohol is not restricted in external areas, the sale of alcohol will be unlawful. In practice, this would prevent you from setting up a temporary bar or using hawkers in your garden/terrace/other external area. Table service is also likely to be unlawful.

The requirements for street café/pavement licences and street trading licences vary from authority to authority and, indeed, can even vary from street to street within a particular authority's area. However, one thing is guaranteed: there will be a notice period for any such application and, therefore, unless you already have the correct approvals, you cannot simply look out of your curtains in the morning before deciding to make use of outside space.

You should also be aware that use of external areas by customers for smoking can have its own issues. Whilst the smoking legislation does not prevent customers from smoking outside, noise from smokers can be a significant source of disturbance to nearby residents and you may need to manage that to prevent complaints and potentially a review of your premises licence.

If you would like advice on licensing external areas for your business, please contact us. Unfortunately though, we cannot guarantee the weather!



Consultations And Increasing Consumer Awareness of UK Hygiene Ratings – Is Prevention Better Than Cure?

The UK Food Standards Agency (FSA) has recently published the results of its biannual public attitudes tracker. The results show that the top food safety concern for respondents is food hygiene when eating out. Perhaps more noteworthy though is the increased awareness of the Food Hygiene Rating Scheme (FHRS), often called 'scores on the doors'.

The FSA reports that:

"...more than a third (37%) of respondents in England, Wales and Northern Ireland reported being aware of the FHRS, compared to 21-34% between November 2011 and May 2013."

The survey was compiled by interviewing a representative sample of over 2,500 adults in the UK.

Background

The FHRS was launched in England, Wales and Northern Ireland in November 2010, although it has been operating in some parts of Scotland since 2006 (the Food Hygiene Information Scheme). The scheme is run by local authorities, which rate premises such as restaurants, takeaways, cafes, sandwich shops, pubs, hotels, food shops and schools/hospitals following inspections. The rating is then published on the FSA's website, with a search facility for the general public to check the scores.

In England and Northern Ireland, businesses are not currently required to display their rating on the premises, although many choose to do so if their rating is good. In Wales, however, businesses that get a new rating after 28 November 2013, must by law display a sticker showing their rating in a prominent place. With awareness of the scheme on the increase, getting a good rating is likely to be increasingly important to customer-facing businesses, even where the display of the sticker is not yet mandatory.

What Factors Will Affect Your Rating?

The FHRS works by giving marks for food hygiene and safety; structure and cleaning; and confidence in management and control procedures. The last category is based on the business having a food safety management system, for example, a written HACCP (Hazard Analysis and Critical Control Point system), or a written system developed in house covering all aspects of the business including matters such as training, stock control and delivery checks.

Developing and recording robust written systems for food safety management and hygiene will therefore be an important factor in getting a good/improved rating under the scheme, as well as helping to ensure compliance with the Food Hygiene Regulations 2006 and Regulation 852/2004/EC, which require food business operators to comply with general hygiene requirements and put in place procedures to manage food safety within their establishment.

Can you Improve Your Rating?

Whilst the level of concern amongst the general public regarding food hygiene may well justify the continued use of 'scores on the doors', businesses have a legitimate concern that infrequent inspections might mean they are stuck with a poor rating long after they have made improvements. The frequency of inspections is in reality in the hands of the local authority, after all.

There is some comfort in that you can request a re-visit after you have made improvements recommended by the food safety officer, although as you are only entitled to one re-visit between the authority's planned inspections of your premises, it is important to address all of the recommendations first.

However, the re-visit system is potentially of limited comfort: while the new scores will be published by the local authority following the re-visit, there may well be a delay of several weeks or even months until the re-visit takes place. In the meantime, the scores from the previous inspection will remain on the FSA website and potentially affect customer loyalty.

What if the Local Authority 'Get it Wrong'?

Businesses can appeal a rating if they believe it is wrong or unfair i.e. does not properly reflect the hygiene standards at the time of the inspection. The appeal must be made in writing within 14 days of the notification of the rating and the case will be reviewed by another officer, who may re-visit. In the interim period, the FSA website will show the rating as 'awaiting publication'. The appeal process does not, however, apply where changes have been made since the inspection and therefore it will be of limited application.

Separately, businesses have a 'right to reply' to explain to customers actions taken since the inspection or unusual circumstances during the inspection. Your comments must be sent to the food safety officer that undertook the inspection on a standard form and your comments will be published online alongside your hygiene rating (although the local authority may edit your comments to remove offensive, defamatory, inaccurate or irrelevant remarks). Utilising the right to reply may help to manage customer reactions, but will not affect the rating itself.



Prevention Better than Cure?

The options to request a re-inspection, appeal a decision, or post comments under your right to reply are undoubtedly tools for damage limitation in an electronic age where bad publicity travels faster than ever. It is likely that they will be used more and more frequently as customer awareness of the FHRS increases.

However, though useful, these tools certainly do not eliminate the risk to reputation altogether: in the event of a re-inspection, there will be a significant delay until scores are revised; the grounds for an appeal will only arise in limited circumstances; and the right to reply means only that your comments will be posted alongside the rating, the rating itself will remain.

As such, the old adage that 'prevention is better than cure' certainly remains the case: food business operators should make sure they understand the scoring system and requirements under food safety legislation to ensure that they get a good rating 'first time round' during planned inspections by understanding their obligations on hygiene, assessing the risks and implementing and documenting management systems to address those risks.

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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