

Welcome to our round up of key licensing issues and developments.

Highlights include:

- Personal Licence Renewals – Will they or won't they?
- Amendment of Mandatory Conditions – DPS responsible for application of age verification policy, small measures to be on menus, irresponsible promotions redefined and free drinking water
- Update on EMRO and Levy Consultations – Levies approved for City of London, Nottingham, Southampton and Chelmsford and consultation for Liverpool imminent
- Food Information Regulations 2014 – In force from **13 December**
- Increased / Unlimited Fines in the Magistrates' Court

Finally, perhaps unsurprisingly, there is no further news on the licence fee consultation we reported on in our last [issue](#). We will keep you updated.

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. We can also provide tailored advice on what legislation changes will mean for your business.

Personal Licence Renewals – Will They Or Won't They?

In March, we reported that the Home Office had published consultation responses in relation to the future of [personal licences](#); and that under the Deregulation Bill, personal licences would have effect indefinitely (i.e. there would be no renewal required). We remain concerned that the first renewals will fall due before the Bill becomes law and we still suggest that operators "hope for the best but plan for the worst".

The Bill is now with the House of Lords. It has been reported that the Minister for Crime Prevention, Norman Baker, has acknowledged to licensing authorities that:

"There are a number of alcohol licensing provisions progressing through Parliament as part of the Deregulation Bill. One such measure is the removal of the need to renew a personal licence. The timescales for the Bill means that there may be some who will need to renew their licence before the changes take effect."

Mr Baker added that officials will work with licensing authorities to agree how transitional arrangements will be handled. He has also indicated that specific guidance will be published later this year.

Under the current legislation, renewals of personal licences must be submitted between one and three months prior to expiry and the first expiry dates will be in February 2015. We would advise all operators should budget and plan at least for personal licence renewals falling due in the first half of 2015.

Recent discussions we have had with licensing officers indicate that they have no more information than the trade and are keeping everything crossed that they will not need to deal with renewals (but hope is fading fast). We will, of course, report further if and when specific guidance is published.

Amendment Of Mandatory Conditions

Amended Mandatory Conditions will take effect on premises licences in England and Wales on **1 October**. Mandatory Conditions are conditions which apply to all premises licences, although some are restricted to sales for consumption 'on' the premises only. Breach of a Mandatory Condition is an offence punishable by a fine of up to £20,000 and/or up to 6 months' imprisonment, at current levels.

All Licences

The only change which will apply to both the 'on' and 'off' trade, is the change to the mandatory condition on age verification policies. Since 2010, the Mandatory Conditions have required the premises licence holder to ensure that an age verification policy applies to the premises. The new wording requires that a policy is adopted, which in our view implies a more active implementation of the policy.

Further, there is a new requirement that the designated premises supervisor (DPS) in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. Again, this suggests active implementation and there will be a named individual responsible for this, even where the licence is held by a company.

The final change to the age verification condition is to the form of identification. Under the new condition, identification can include an ultraviolet feature rather than a holographic mark.



Licences for Consumption 'on' the Premises

There are a number of other changes which will affect what is required for hotels, bars, restaurants and other premises licensed to allow consumption of alcohol on the premises. The key changes are as follows:

1. Availability of Small Measures – Must be Displayed

Since 2010, the licence holder, DPS or other authorised individual, has been required to ensure that alcohol is available to customers in the following measures:

- Beer or cider: ½ Pint
- Gin, rum, vodka or whisky: 25ml or 35ml (i.e. a 'single' measure); and
- Still wine in a glass: 125ml

In our experience, it is the 125ml wine measure which has caused most confusion, as many understand a 'small' wine to be 175ml and a 'large' wine to be 250ml.

Under the amended Conditions, not only must these measures be available, they **must also be displayed on a menu, price list or other printed material which is available to customers on the premises.**

In addition, where a customer does not specify the quantity of alcohol to be sold (for example if they just ask for a "glass of white wine"), the customer must be made aware that these measures are available. The Guidance issued by the Home Office in relation to the Mandatory Conditions clarifies that this information can be given either verbally or by ensuring the customer has seen the printed materials.

All operators should therefore review and update menus and price lists available to customers and ensure that small measures are included. Staff training will also be required to ensure that customers are asked if they would like the smallest measure when they do not specify a size.

2. Irresponsible Promotions

The amendments to the Mandatory Conditions will also include a new definition of irresponsible promotions (a condition which has always been fairly incomprehensible).

The new condition will ban entirely:

- a. Games or other activities which: require or encourage individuals to drink alcohol within a time limit; or drink as much alcohol as possible (or are designed to).
- b. Selling/ supplying alcohol in association with promotional posters/ flyers which condone, encourage or glamorise anti-social behaviour or refer to drunkenness in a favourable manner.
- c. Dispensing alcohol directly into the mouth of another person (e.g. dentist's chair type promotions).

In addition, the following promotions will be banned, if they are carried on in a manner which carries a significant risk of undermining crime and disorder, public nuisance, public safety, or the protection of children from harm:

- a. Provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or a group defined by a particular characteristic (e.g. £10 entry, unlimited drinks/ women drink free promotions);
- b. Provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less (e.g. buy one, get one free-type offers).

An important difference from the current wording, is that the new condition does not exempt the provision of unlimited or unspecified quantities of alcohol where they are ancillary to a table meal.

The courts would consider a number of factors when ascertaining whether there is a 'significant' risk in the event of a prosecution, for example the nature of the premises, its location, the history of any issues / promotions previously, how the premises are managed and how the sales of alcohol will be supervised. The Home Office Guidance details factors such as: the size of the discount; the length of time that the discount applies; whether there is likely to be a significant increase in the number of customers; the profile of the customer base; whether it is a high volume vertical drinking premises or a community pub; whether previous promotions have been handled responsibly; whether the licence has been reviewed; and whether sufficient security measures have been taken.

We would advise that any risk assessment for a promotion which may be categorised as 'irresponsible' under this condition focuses on these factors. Where there is any doubt, the proposals for the promotion could be discussed with the licensing authority and/ or the police in advance. We can, of course, advise on any proposed promotion that you are uncertain about.

3. Drinking Water

The 2014 Order provides that the responsible person must ensure that free potable water is provided on request for customers where it is reasonably available.

This is a change from the existing requirement for free tap water to be provided on request i.e. as long as it is drinking water, it does not need to come from a tap, but it must still be free.



EMRO And Levy Update

Early Morning Restriction Orders (EMROs)

Lambeth have now rejected the proposed EMRO we previously reported on. This was the only outstanding consultation on an EMRO.

Late Night Levy

Since our last edition, there have been a number of new levy proposals/ approvals.

Most recently, **Southampton** Council has voted in favour of a levy for sales of alcohol between midnight and 6am, to apply from 1 April 2015. There will be no reductions to premises paying the levy. However, variation applications can still be made to curtail the hours on your premises licence at midnight to avoid the levy period.

City of London has also approved the levy, which will be in force there from 1 October, again for sales between midnight and 6am. In City, there will be a 30% reduction for premises that have shown they operate at the standard required to achieve the City of London 'Safety Thirst' Award.

A late night levy for **Nottingham** was approved in July, applying from 1 November for sales between midnight and 6am. There will be an exemption for members of the City's Business Improvement District.

Chelmsford City Council's levy will also apply from 1 November, although the levy period will start at 1am in Chelmsford (it will apply for sales between 1am and 6am). There are no reductions.

Liverpool are due to consult in October on the proposed introduction of a levy and we will report on any developments in future issues. Meanwhile, **Plymouth** have delayed consultation.

If you need advice in relation to a levy, or would like to vary a licence to avoid liability, please contact us for advice.



Food Information Regulations 2014

We reported in [November on the EU Food Information for Consumers Regulation \(the "EU FIC"\), which will apply in the UK from 13 December 2014](#). As set out in our earlier newsletter, the EU FIC will mean a number of significant changes for the labelling of pre-packed food. Perhaps more importantly for the licensed trade though, it will also affect the provision of information on non-pre-packed/ loose foods, including food sold on deli counters, in pubs, hotels, restaurants, take-aways, cafés; and food supplied by caterers, for example, in staff canteens, at functions or on wedding buffets. Regulations to enforce certain provisions of the EU FIC in England were finally laid before Parliament on 15 July. These regulations are the Food Information Regulations 2014 (the "2014 Regulations"). A summary of responses to the consultation on the regulations has also been published by DEFRA.

Allergen Information

Under the rules in the EU FIC, the 14 food allergens listed (including peanuts, milk, eggs and cereals containing gluten) will need to be specifically highlighted to customers for both pre-packed and loose foods. 'May contain' declarations/ notices will be discouraged.

For loose foods, the summary of consultation responses confirms that in England, operators will be able to provide allergy information in the ways that best suit their individual business, including verbally if strict conditions are adhered to. However, it may be more difficult to demonstrate effective compliance if a business relies only on verbal communication by staff (albeit that oral information will be the only option for some businesses, for example those taking orders by phone). Other means of providing the information could include a menu, a chalkboard, or sign/ notice.

If you haven't done so already and you are selling food, over the coming weeks you should review your menus/ means of providing allergen information, assess any training needs for staff in relation to allergens, engage with your suppliers as to ingredients and review food preparation (in terms of cross-contamination), to ensure that you will be in a position to comply with the 2014 Regulations from **13 December** onwards. Beer is classed as food and therefore allergen information should also be available for draft beers (allergens for beer may include cereals and sulphites).

The Food Standards Agency (FSA) has published [Guidance](#) in relation to the provision of allergen information for loose foods. It states that where allergen information is not provided upfront in writing, signposting a customer to where they can get this information will be required. This could be, for example, by way of a sign, notice or statement at the till point, on a menu board, or on the menu. For example, a sign might direct customers to ask staff for allergen information (although as set out above, our advice would be that reliance only on verbal communication might make it difficult to demonstrate effective compliance).

Other Requirements - Retention of Existing National Measures

In addition to the key changes on allergen information, the 2014 Regulations retain the existing national requirement to name non-pre-packed foods (which is not a specific requirement of the EU FIC). This means that for loose foods, the legal name of the food (if there is one e.g. for certain fish species), or the customary name (e.g. 'bakewell tart') or a descriptive name which indicates the true nature of the food, must be given. The name must appear on a label attached to the food, or (which is more likely for loose foods) on a notice, ticket or label that can be easily read by a customer in the place where they choose that food. This could, of course, include a menu.

In addition, for alcoholic drinks, the terms 'low alcohol', 'alcohol free', 'de-alcoholised' and 'non-alcoholic' will continue to be applicable in the medium term. These terms are currently defined by the Food Labelling Regulations 1996:

- Low alcohol (not more than alc. 1.2% by volume)
- Alcohol free (not more than alc. 0.05% by volume)
- De-alcoholised (not more than alc.0.5%)
- Non-alcoholic (for non-alcoholic wine made from unfermented grape juice intended exclusively for communion or sacramental use).

The Government intend to delay the revocation of these existing provisions following the 'coming into force' date of the EU FIC for a further four years (which they are permitted to do). After this time, they will, however, lapse, unless there is further legislation in the meantime.

Enforcement

Under the 2014 Regulations, although the primary enforcement mechanism in England for failure to comply with the EU FIC will be Improvement Notices, failure to comply with allergen labelling/information requirements for both pre-packed and loose foods may still be dealt with from the outset as a criminal prosecution in the magistrates' court.

The penalty under current fine levels is £5000 per offence (level 5). However, if the proposed changes to fine levels under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are implemented (see further below), magistrates will have the authority to impose an unlimited fine for each offence.



[1] The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Standard Scale of Fines for Summary Offences) Order 2014.

Increased/ Unlimited Fines In The Magistrates' Courts

It has been widely reported in the press that maximum fines available to magistrates will soon increase fourfold; and that the lower courts will also be able to levy unlimited fines for some offences in England and Wales. The greatest attention has probably been on the impact these powers will have on motorists. For example, the [Guardian](#) reported that motoring groups said the new fines were disproportionate and could put people off challenging unfair speeding tickets. Similarly, [Channel 4 News](#) focused on the potential for motorway speeding fines to hit £10,000.

However, you may need to consider the effect of the changes on your approach to licensing and wider regulatory compliance, as the new provisions will affect a very wide range of legislation including licensing, food, health and safety and environmental laws. The [Publican Morning Advertiser](#) has already reported on the potential effect unlimited fines for the sale of alcohol to under-18s will have on the pub trade.

Background

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the "Act") allowed for the changes to magistrates' courts sentencing powers. At that time, sections 85 and 87, which remove the limit on certain fines and provide a power to increase other fines, were not brought into force.

However, the Government announced earlier this year that it now intends to bring the relevant section into force to remove the current limits on fines imposed in the magistrates' courts. It has also published draft secondary legislation to increase the standard scale of fines for summary offences [1]. There is no indication as yet as to when these will be brought into force.

The Changes

The "fourfold" increase reported in the press relates to the proposed changes to sums for penalties currently specified in various legislation as levels 1 to 4 on the standard scale. The old and proposed new fine levels are as follows:

| Scale | Maximum Fine – Existing (£) | Maximum Fine – Proposed (£) |
|------------|-----------------------------|-----------------------------|
| 1 | 200 | 800 |
| 2 | 500 | 2,000 |
| 3 | 1,000 | 4,000 |
| 4 | 2,500 | 10,000 |
| 5/Stat Max | 5,000 | Unlimited |

There are a number of 'notification' licensing offences for which the specified penalty is level 2, for example failure to notify the licensing authority of change of name or address, failure to notify convictions, or failure to produce a personal licence on request. Allowing disorderly conduct on licensed premises, the sale of alcohol to a person who is drunk, keeping smuggled goods and allowing unaccompanied children on relevant premises (during relevant times) are level 3 offences.

However, probably more significant for corporate organisations, is the removal of the cap on fines.

Under section 85(1) of the Act, for any offence punishable on summary conviction (i.e. in the magistrates' court), a fine currently capped at £5,000 (which may be referred to in the offence as a 'Level 5' fine or the 'Statutory Maximum') will now be a fine of an unlimited amount. Under the Licensing Act, this includes the sale of/ allowing the sale of alcohol to under-18s. It also includes obstructing officers acting in the execution of the Food Safety Act.

In addition, higher caps specified in various legislation, will also be fines of an unlimited amount if/ when the section comes into force. This includes the provision of unauthorised licensable activities, which is currently punishable on summary conviction by 6 months' imprisonment and/ or a fine of up to £20,000; and 'persistently' selling alcohol to children (twice or more within a 3-month period), which again is punishable by a fine of up to £20,000 currently, but will be unlimited once the proposed changes are introduced. It also includes a number of offences under the Food Safety Act which are currently capped at £20,000.

Effect on Corporate Organisations?

Under existing sentencing guidelines, it is already common practice for the depth of a company's pockets to be considered by magistrates when sentencing. For example, for health and safety offences, the fine should be substantial enough to have a real economic impact on a corporate offender and to bring home to management and shareholders the need to improve regulatory compliance. For environmental offences, the guidelines specifically require the court to focus on annual turnover to reach a starting point for the fine.

Existing sentencing guidelines have not yet been amended to provide magistrates courts with guidance on the fine levels that are appropriate if there are no caps. However, we would suggest that 'ability to pay' is likely to be a consideration when the level of fine the magistrates can impose is unrestricted.



An [Equality Impact Assessment](#) was published by the Ministry of Justice in relation to the proposals. It states (page 5):

1% of all fines in the magistrates court and around 60% of all fines of £5,000 or over in the magistrates court, are issued to organisations.

...It is the organisations who commit summary offences and currently get fines of £5000 or more who are most likely to be affected and they will be differentially affected relative to individuals.

According to the Impact Assessment, the impact on organisations is justified as in general **"organisations are likely to have greater funds at their disposal than individuals and are therefore more likely to be able to pay higher fines set by reference to their financial means"** (page 7). This suggests that corporate organisations are more likely than individuals to receive higher fines once the change has been brought into force.

Contact

It would appear as though the next few months will be busy (and expensive) in terms of licensing developments and requirements. For further advice, training, or copies of our previous newsletters, please contact:

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