

In this edition, we report on:

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Christmas and New Year: Spread the Licensing Joy

Christmas is coming, the goose is getting fat, please put a feather in the licensing officer's cap!

It is the time of year when business is (hopefully) at its strongest, but with increased customers come increased risks of potential disorder; licensing inspections and test purchase operations often increase; and it is important to remember to cover any extra hours or activities needed for the festive season with Temporary Event Notices (TENs).

In readiness for licensing inspections, operators should ensure that at each licensed premises, they are properly displaying their summary and notice of nomination, the original or a certified copy of the current licence is on site and the layout of the premises is in accordance with the licence plans. Do all your front-of-house staff know where these documents are? It is important that they do in case they are on duty when an inspector calls. Is the nominated designated premises supervisor (DPS) still in post? If not, an application should be submitted to name another personal licence holder as DPS as soon as possible (there is no authority to sell alcohol when there is no DPS). Personal licence holders should be reminded to carry their licence card with them when they are at work.

Managers would be well advised to remind staff about age-checking at busy times, the applicable proof of age policy and any other procedures they should be following. Remember, if you are using temporary or agency staff, they should receive and sign off on all required training. Remember, too, that during inspections you may be asked to show compliance with Mandatory Conditions, for example the production of your proof of age policy.

If you need to extend your opening hours on key dates, it is sensible to put applications for TENs in as early as possible. Although short-notice TENs can be granted as little as a week in advance (a clear five working days' notice), any objections to a short-notice TEN result in automatic rejection. Therefore, allowing enough time for a standard TEN and negotiations around that, if necessary, is sensible whenever possible. There is a current maximum of 15 TENs per premises in a calendar year (and there are other limits around the length of each TEN, the maximum number of days per year, the number of TENs per applicant and a required "break" of 24 hours between each TEN).



If you are planning extended hours or special events, or even if you are just expecting a busier period, it may be sensible to:

- Review the conditions on your premises licence, in particular in relation to any maximum numbers, or conditions that may apply for special events, such as those including regulated entertainment
- Conduct appropriate risk assessments: are additional safeguards required, such as the use of plastic glasses, SIA door supervisors, dispersal arrangements, and/or an enhanced ID policy?
- Ensure your CCTV cameras and recording system are in full working order
- Remind staff to record all refusals to sell alcohol due to age and/or drunkenness

Here is to a happy Christmas and a prosperous New Year!

Minimum Unit Pricing Proposal: Wales

The Welsh Government launched a [consultation](#) on the introduction of a minimum unit price for alcohol back in 2015, but halted proposals following the legal challenge to the scheme in Scotland. However, recent [news reports](#) indicate that a minimum price is back on the cards and will follow under the Wales Act next year.

The Public Health (Minimum Price for Alcohol) (Wales) Bill was introduced before the National Assembly for Wales on 23 October by the Public Health Minister, Rebecca Evans. The Bill does not provide any details on what the minimum price would be, and instead proposes that the level of the minimum price would be specified in regulations made by the Welsh Ministers.

Operators of licensed estates with premises on both sides of the Welsh border could face a nightmare if they have to have different pricing strategies in the different jurisdictions. However, this is currently only a proposal; it is not yet law. We will report further in the New Year if the proposal is to be implemented.

Scores on the Doors: Food Hygiene Rating Scheme Campaign

The trade press have [reported](#) that the Food Standards Agency (FSA) is encouraging customers to check food hygiene rating scores before booking Christmas parties.

The Food Hygiene Rating Scheme has been operating in England, Wales and Northern Ireland since November 2010 (although it has been operating in some parts of Scotland since 2006 as the "Food Hygiene Information Scheme"). The rating, awarded following a local authority inspection, is published on the FSA's website, with a search facility for the general public to check the scores. In England, businesses are not currently required to display their rating on the premises, although many choose to do so if their rating is good (display is mandatory in Wales, though).

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. The scheme works by giving marks for food hygiene and safety; structure and cleaning; and confidence in management and control procedures. Developing and recording robust written systems for food safety management and hygiene are, therefore, important in getting a good/improved rating under the scheme, as well as helping to ensure compliance with legislation governing food hygiene.

If you are not happy with your current rating, you can request one revisit between planned inspections (after you have made the improvements recommended by the food safety officer), although it is likely there will be a delay until the revisit takes place. You can also appeal a rating if you believe it is wrong or unfair, i.e. it 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 revisit. In the interim period, the FSA website will show the rating as "awaiting publication".



In addition, you do have a “right to reply” to explain to customers the actions taken since the inspection or unusual circumstances during the inspection. This might be helpful in terms of managing your reputation with customers (comments must be sent to the food safety officer that undertook the inspection). Your comments will be published online alongside your hygiene rating.

However, on the basis that “prevention is better than cure”, an understanding of the scoring system applied by officers and requirements under food safety and hygiene legislation is important to ensure you get a good rating the first time around. Check what your rating says about you on the [FSA's website](#).

Kingston Late Night Levy Rejection

Kingston Council has rejected the introduction of a late night levy in its Royal Borough. Its [decision](#) was made because the Committee considered that there is no current need for a Late Night Levy in Kingston upon Thames. It followed an earlier rejection of a levy in 2013 on the grounds that the potential costs of a levy scheme outweighed the potential benefits.

Where a Council introduces a late night levy, all licence holders with licences authorising the sale of alcohol within the specified levy period, are required to pay an additional amount on an annual basis (unless the licence is varied to remove the additional hours). The annual levy amount is £1,493 for premises in the top bracket of rateable value, set under national legislation (although it can be up to £4,440 for premises used exclusively or primarily for the sale of alcohol in the same bracket).

Licensing Guidance From London Night Czar And Review Of Form 696

The office of the London Mayor has [reported](#) that the Night Czar, Amy Lame, has published guidance aimed at protecting, supporting and sustaining London's night-time venues. The Guidance was launched at a grassroots music venue that Amy has been working with, in collaboration with Camden Council, to increase its capacity for live music events (with a view to helping the venue to meet rising costs as a result of the rise in business rates earlier this year).

According to a report by *The Planner*, the guidance is for local authorities and developers, providing them with “urgently needed” support to safeguard the capital's night-time economy and culture venues.

The Mayor of London's report on music venues, indicates that London has lost nearly half of its nightclubs and a third of its grassroots music venues since 2007, a quarter of its pubs since 2001 and 58% of its lesbian, gay, bisexual and transgender venues since 2006. The Mayor's Office stresses that local authorities have a huge part to play in helping the night-time economy thrive, and the new guidance sets out how they can ensure new homes co-exist with current live music venues, nightclubs and pubs, by encouraging local authority planning, licensing and noise teams to work together.

The Mayor has also ordered a review of the Police Form 696 Risk Assessment for music events in the capital. This follows concerns that it unfairly targets acts in certain genres (grime, R&B and garage music).



The Mayor's Office has [indicated](#) that the review will be completed and a new form implemented by the Met in early 2018, so if you are proposing special events in London this side of Christmas, you should continue to use the current form.

Immigration Raids in Reading

We reported in our last [issue](#) of Licensing without Hiccups on a number of changes to the licensing regime introduced by the Immigration Act 2016, including a new right of entry to licensed premises for immigration officers to investigate immigration offences.

It seems these powers are already being used extensively in some areas. Local press [reports](#) confirm that illegal workers have been apprehended at 16 Reading businesses in the last six months. This followed on from inspections at 32 licensed premises by licensing officers in conjunction with Immigration Enforcement Officers.

The report indicates that officers found 22 illegal workers who were living in poor conditions and being paid below the minimum wage. The employers were failing to carry out right-to-work checks and making cash in hand payments. They also uncovered numerous licensing and food safety breaches. The report notes that the Council is looking to review the licences of three of the premises.

While responsible businesses will not knowingly employ illegal workers, recent enforcement activity underlines the importance of ensuring your teams are prepared to deal with such inspections and can access right-to-work documentation. It also underlines the importance of ensuring you have appropriate right-to-work documentation for all employees. As set out in our last edition, proof of right to work in the UK must now be submitted for new personal licence applications. But, equally importantly, for existing personal licence holders, their licence will cease to have effect if the holder of the licence ceases to be entitled to work in the UK. It is, therefore, crucial to ensure you have records of any applicable expiry dates, and to ensure there is a sufficient coverage of personal licence holders who can “step into the breach” if required.

It is worth noting, in terms of immigration, that there is growing concern within the licensed sector about the status of EEA nationals. While the House of Lords is attempting to guarantee rights post-Brexit – and the government recently called for evidence regarding the expected impact of reduced migration on UK businesses – uncertainty is leading many EEA nationals in business-critical roles, both skilled and unskilled, to leave the UK. Businesses should, therefore, be planning for potential mobility restrictions and labour shortages in the future. Our Business Immigration team can provide support with risk assessments, employee surgeries and workforce audits, if required.

Proposed Changes to Licensing Act 2003: Government Response to House of Lords Select Committee Report

The Government has published a [response](#) to the House of Lords Select Committee report on the Licensing Act 2003 (for further details of the report's proposals, please see our previous [issue](#) of Licensing Without Hiccups).

The Government has said in its response that it does not “intend to be hasty” in overhauling the Act, but that “there are a significant number of recommendations that the Government agrees will help improve the operation of the Act, for example clarifying points of practice for licensing committees by amending the statutory guidance and looking at the provision of good quality training to licensing committee members.” The Government has also indicated it intends to look further as to how the system of licensing can be made to function more effectively and the lessons that can be learned from the planning system.

In relation to the proposal to merge planning and Licensing Committees, however, the government has said that its focus is on improving training and providing stronger guidance on how licensing hearings should be conducted. It has also confirmed that it does not intend to change the appeal process (it had been suggested that licensing appeals should lie to an inspectorate as in planning, as opposed to the magistrates' courts).

In terms of the administration of applications, many operators will be pleased to hear that those authorities that insist on a hearing even after matters/conditions have been agreed between the applicant and the persons making representations will be asked to provide the reasons for that decision. The Government accepts it is reasonable that it should do so and will include this recommendation in the Section 182 Guidance to Licensing Authorities. There is more good news: the Government does not intend to make changes to existing fees in the immediate future. However, the bad news is that the requirements for applications to be advertised in a newspaper will continue.

The Government has indicated that no new licensing objectives (such as the promotion of public health or compliance with equality legislation) will be introduced and legislation on Early Morning Restriction Orders (EMROs) will not change, despite the fact that such Orders have not proved a popular measure amongst local authorities. Furthermore, operators will be pleased to hear that local authorities will not be granted powers to ban super-strength alcohol across many premises simultaneously.

However, the Government welcomes the guidance published by the Association of Police and Crime Commissioners, which calls for a multi-component approach to tackling street-drinking that includes an offer of treatment and engagement with services such as housing and mental health, as well as effective enforcement activity.

All this said, it is our view that no significant changes will be implemented anytime soon. At this stage, this is simply a Government response to a House of Lords proposal and many changes require approval and implementation (although changes to the Statutory Guidance may be quicker). As we concluded in our previous edition, there are likely to be other priorities for the government in the short term, particularly as the country prepares to leave the European Union.

Basic Criminal Record Checks: Changes for Applicants in England and Wales from 1 January 2018

In the new year, personal licence applicants will no longer be able to apply to Disclosure Scotland for their “basic disclosure” if their job role is in England and Wales. Individuals who are working in England and Wales (even if they live in Scotland) will need to apply to the Disclosure and Barring Service (DBS).

A basic disclosure is a criminal record check that reports on a person's current convictions. It can be requested by individuals, or third parties with explicit consent from the individual. The disclosure (an original, not a copy) must be provided to the relevant licensing authority with all applications for grant of a personal licence.



The disclosure must be dated within 28 days and, therefore, any delays in issuing it could impact on the efficiency of the personal licence application process, because in practice the disclosure cannot be applied for much “in advance”, i.e. before the applicant has their National Certificate for Personal Licence Holders and all other required documentation (as otherwise it might expire before the applicant is ready to submit the application).

Disclosure Scotland and DBS are two separate agencies. Although Disclosure Scotland has processed England and Wales basic disclosure checks for a number of years now, this was officially on a “temporary” basis, under a delegation which ends on 30 July 2018. The change is required because a conviction is “spent” more quickly in England and Wales than it is in Scotland, Northern Ireland or the Channel Islands. Therefore, if you obtain a Basic Disclosure in Scotland, for a job role in England, you might receive information you are not entitled to see.

DBS has already issued a number of documents in relation to the new basic check service, which can be accessed on its [website](#). These include processing standards; terms and conditions; identity guidance for organisations responsible for submitting basic checks to DBS; and trading terms for those responsible organisations. They have also issued a [brochure](#) summarising changes to the service, which confirms that from 1 January 2018, individuals applying for their own basic disclosure should apply through the GOV.UK portal. Applications submitted to Disclosure Scotland before this date (i.e. up to and including 31 December 2017) will, however, be processed by Disclosure Scotland even after 1 January.

Responsible organisations are those organisations registered with DBS to submit applications for basic checks through a web service (see summary [online](#)). Therefore, if you apply for basic disclosures on behalf of your employees, you should register as a “responsible organisation” now in preparation for the change. Registration is done through the DBS [portal](#).



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