

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

Highlights include:

- Consultation on personal licences – we consider the detail and practicality of the proposals.
- EMRO and Levy Consultations and Considerations – an update.
- Deregulation of Entertainment – What remains licensable and further proposed exemptions.
- The pre-Christmas season often brings a renewed focus on enforcement – are you prepared?
- Food Labelling changes – applicable from 13 December 2014 – will affect food served in restaurants, take-aways, pubs, restaurants, from deli-counters and by caterers, as well as pre-packed products.
- Electronic cigarettes – what is the legal and practical position?

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.

Personal Licence Consultation

On 12 September 2013, the Home Office issued a Consultation on "enabling targeted, local alternatives to personal licences to sell alcohol". The Consultation closed on 7 November and a summary of the responses should be published within the next few weeks.

The Consultation Introduction confirms that the Home Office does not consider that renewing personal licences every ten years is an effective or proportionate way to tackle crime and disorder and that they have committed to removing that requirement.

However, the Consultation does not propose extending the period of validity or removing the renewal requirement altogether. Instead, the Ministerial Statement from Jeremy Browne MP, states that the personal licence system as a whole "may not always be the most targeted and proportionate way to ensure alcohol is sold responsibly. For example, all premises – from the riskiest to the quietest – must comply with the system regardless of whether it is locally appropriate or not."

The Consultation proposes the removal of personal licences altogether and replacing them with locally applied conditions to premises licences where appropriate.

Whilst any business would warmly welcome a genuine reduction to 'red tape', serious concerns have been raised by Local Authorities and businesses alike that replacing the personal licence system with extra conditions on premises licences, would not in reality reduce red tape at all. In fact, it is likely to complicate matters, in particular as Premises Licences authorising the sale of alcohol would still require a Designated Premises Supervisor.

The BII (British Institute of Innkeeping) Chief Executive has also expressed concern about the trade's reputation and the ALMR (Association of Licensed Multiple Retailers) have questioned whether such a move would undermine the sector – under the current system, all sales of alcohol have to be authorised by individuals who have undertaken nationally-recognised training and criminal record checks.

There would doubtless be differences in approach to Premises Licence conditions from Authority to Authority. Whilst the Consultation specifies that national benchmarks would be retained for training and criminal record checks to prevent regional variation, it is likely in our view that there would be different approaches by Local Authorities in conditions applied as to whether/ how many staff would be required to take those courses/ obtain criminal record checks. Experience suggests that 'blanket' conditions on these matters may be applied to all Premises Licences by certain Authorities.

Councils may include conditions requiring that a certain number of the total workforce, or a certain number per shift, or even all employees, have passed a specified course. These are likely to be difficult to manage in practice. The licensed trade, for both on and off sales of alcohol, can have relatively high turnovers of staff with people leaving and being appointed at short notice; and cover sometimes has to be arranged immediately in the event of sickness or staff emergencies. Where a new member of staff does not already have the training specified on a Premises Licence condition, or already have a criminal record check, it may prove difficult or impossible to comply in the short term. Would this really assist businesses and be an improvement on the personal licence system?



In addition, the Consultation proposes that if personal licences are abolished, Councils can impose a condition requiring a criminal record check to be submitted with any application to vary the Designated Premises Supervisor (DPS). This would undoubtedly cause practical problems for an urgent DPS variation, as criminal record checks are not returned instantly by either of the two current bodies (the Criminal Records Bureau and Disclosure Scotland). In fact, when the school term is imminent, there can be delays of several weeks (amidst applications by teachers, other school staff and volunteers).

In Scotland, all personal licence holders are required to undertake mandatory training every five years. Is this an option which might be considered for England and Wales?

Ancillary changes proposed under the Consultation are as follows:

- i. Amending the mandatory conditions to require all alcohol sales to be authorised by the DPS, rather than a personal licence holder;
- ii. Allowing the police to object to a new DPS based on the crime prevention objective in general, rather than only in 'exceptional circumstances';
- iii. Allow licensing authorities to require a criminal records declaration with each new change of a DPS (as set out above); and
- iv. Allow those who either are named as the DPS on a premises licence or have accredited training to give up to 50 Temporary Event Notices (TENs) a year; those without would be limited to giving only five.

We will report further on any proposed changes to the personal licence regime when the response to the Consultation is published. The first tranche of renewals will be due in 2015 i.e. 10 years after the Licensing Act first came into force. We would therefore expect any changes to the current regime to be introduced before then.

Early Morning Restriction Orders ('EMROs') and Late Night Levy – An Update

EMROs

Three Councils have rejected Early Morning Restriction Order proposals recently: Warrington and Wirral have rejected outright and Norwich has delayed any consideration of an EMRO to next year.

Lambeth, however, has recently launched an EMRO consultation, closing on 28 November, for an area which covers part of Wandsworth Road and North Street in Clapham.

Blackpool is also looking to introduce an EMRO, however the hearing date was deferred recently after failings were highlighted in the council's pre-hearing procedure.

If a Local Authority decides to impose an "EMRO" in an area where your premises are situated, this will prevent alcohol sales during the specified period, which can be anywhere from midnight to 6am.



Levy

Milton Keynes had a final vote on the introduction of a late night levy across its area on 23 October 2013. The proposal was rejected by the full Council.

As previously reported, Newcastle upon Tyne have adopted the Levy and it came into force on 1 November. A 30% discount to the Levy will be applied to premises which are members of a Best Practice Scheme at the beginning of the payment year.

Islington have now also launched a Consultation. The decision on whether to introduce the Levy will be made at a council meeting on 27 February 2014, and if approved it is likely to come into effect in mid-2014. The applicable hours proposed by Islington are between midnight and 6am.

A number of other Councils are currently in the consultation process (including City of London, Tameside and York); and others are considering formal consultation (including Liverpool, Bristol, Camden and Leeds who are proposing to consult on a levy for sales between 00.30 and 6am).

Deregulation of Entertainment

We reported in our last issue of Licensing without Hiccups that the response to the Consultation on the de-regulation of entertainment had been published by the Department of Culture Media and Sport.

Following that Consultation, the Government made an Order which came into force on 27 June this year. The following activities are no longer licensable between the hours of 8am and 11pm:

- Performances of plays for an audience of up to 500
- Exhibitions of dance for an audience of up to 500
- Indoor sport for an audience of up to 1000

Any conditions on a licence relating to these deregulated activities no longer apply during the hours of 8am and 11pm, provided the audience limits aren't exceeded. However, conditions can be added or altered in relation to these non-licensable activities following a review of the licence.

Boxing and Wrestling, combined fighting sports and adult entertainment remain licensable regardless of proposed audience numbers and the time of the event.

A further consultation on the de-regulation of entertainment has now been launched (which closes on 17 December 2013), primarily to reduce the burden for smaller events, particularly events hosted by public authorities. The proposed deregulations under the new consultation include the deregulation of plays, films, indoor sports or performances of dance between 8am and 11pm without a restriction on audience numbers if the entertainment is held by local authorities on their own premises, schools or hospitals on their own premises, or entertainment which is part of nursery provision. Live and recorded music provided in local authority premises, school and hospital premises and community premises such as church and village halls will also be permitted for up to 500 persons without a requirement for a licence.

The good news for other operators is that the Consultation also proposes to increase the audience limit for exempt amplified live music in alcohol licensed premises from 200 to 500 people.

Live music has, of course, already been de-regulated between 8am and 11pm in alcohol-licensed premises, for audiences of up to 200 people for amplified live music. There is no audience limit for premises playing unamplified music between these times.

Pre-Christmas Enforcement – Are You Ready?

The pre-Christmas season often brings with it a renewed focus on licensing enforcement. Last year, Operation Condor saw over the course of one weekend in December 2012, inspections over 32 London Boroughs, involving 4000 officers and 5830 premises.

Test purchase operations also continue, not just for alcohol, but also for other age-restricted products, including cigarettes and use of gaming machines. As always, due diligence and clear communication of policies to staff is paramount. In readiness for licensing inspections, operators should ensure that premises are properly displaying each page of the Licence Summary and the notice of nomination, a certified copy of the current Licence is on site and the layout of the premises is in accordance with the Licence plans.

You may be happy that you have all relevant documents and procedures, but have these been properly communicated to the front of house staff? Remember, that 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.

An inspection may cover numerous things, are often unannounced and can be a little difficult to prepare for, but there are some standard checks you can make:

- Ensure that the up-to-date Licence Summary and Notice of Nomination are displayed and that the full Licence, along with the licence plans, are retained on site.
- Check the details, hours and conditions on the Licence are being complied with. If the name of the premises or the licence holder has changed, this must be notified to the Licensing authority. Relevant members of staff should read the full document, and understand what the Licence authorises, whether it be the sale of alcohol on and/or off the premises, hot food and hot drink, or regulated entertainment. You should also establish if your Licence has any restrictions, for example, music, dance or films being restricted to certain rooms. Any changes to permitted hours, activities or conditions require a variation application.
- Check that your CCTV system is in full working order. Conditions on Premises Licences often specify the locations that the cameras must cover and the number of days images must be retained. If your CCTV does not comply with such a condition, you are in breach of your Licence.
- Ensure refusals books and incident logs are properly completed and reviewed by duty managers from time to time and that staff are aware of the importance of completing such logs.
- Make sure that you, your managers and other relevant staff know where the Licence, Summary, authorisations, incident logs, refusals books, training records and risk assessments are kept, in case they are requested during an inspection.
- If you operate a Challenge 21 or 25 Policy for age verification, appropriate signage must be displayed and documented evidence of staff training on the application of the Policy should be retained.
- Fire escape routes should always be kept free of obstructions at all times, not used as a chair store following a Christmas party!

- Make your staff aware of what questions may be asked by an enforcement Officer. In particular, the following may be asked of any member of staff:
 - Who is the Designated Premises Supervisor?
 - Who is authorising the sale of alcohol (i.e. is there a personal licence holder on duty?)
 - Where is the Licence Summary and Duty to Display?
 - Where is the full copy Premises Licence and can they inspect it?
- Ensure you have an adequate numbers of personal licence holders to provide proper cover for your Premises. The Licensing Act specifies that all supplies of alcohol must be authorised by a personal licence holder and whilst this does not require a personal licence holder to be on duty at all times that alcohol is supplied, that is certainly viewed as best practice by authorities.
- Review your procedures to check SIA licences for employed and/or contracted door staff.

Food Labelling

The EU Food Information for Consumers Regulation will apply in the UK from 13 December 2014. The Regulation will mean a number of significant changes for the labelling of pre-packed food.

However, in addition, the Regulation will require allergy information to be provided on non pre-packed foods including those sold in licensed businesses such as pubs, hotels, restaurants, take-aways and cafés. It will also apply to non pre-packed foods supplied by caterers, for example in staff canteens, at functions or wedding buffets. Under the rules, the 14 food allergens listed in the Regulation, including peanuts, milk, eggs and cereals containing gluten, will need to be specifically highlighted to customers.

Operators will be able to provide allergy information in the ways that best suit their individual business. This could include the provision of information on a menu, a chalkboard or as part of a conversation with staff. However, in reality it is likely to be difficult to demonstrate effective compliance if a business relies only on verbal communication by staff.

Therefore, if you haven't done so already, hospitality and leisure operators selling non pre-packed food should review menus, train staff, engage with suppliers as to ingredients and review food preparation (in terms of cross-contamination) over the coming months, to ensure that they will be in a position to comply with the Regulation from 13 December 2014 onwards.



The new allergen requirements will also apply to labels on pre-packed foods. Responsibility for the information on labels will rest with the operator under whose name the food is marketed or the importer into the EU (so for 'own brand' products, the responsibility will rest with the brand). However, even operators (including retailers) who do not have control over the information, must not supply food which they know or presume has non-compliant labelling.

Pre-packed foods containing any of the 14 allergenic ingredients must be labelled so that the allergenic ingredients are clearly referred to. Allergens must be emphasised in the ingredients list of a product using a different typeset (for example bold). The 'allergy information boxes' that customers in the UK are familiar with will not be permitted if they repeat the allergens in the ingredients list, but can be used to refer customers to the ingredients list. Alcohol, including wine, will no longer be exempt from allergen requirements and producers will need to provide allergen information where ingredients are derived from one or more of the 14 allergens specified in the regulations.

Other changes for pre-packed foods will include font size requirements for general mandatory particulars; use by dates to be given on each individual pre-packed portion; and the introduction of compulsory country of origin labelling for certain products. Compulsory nutrition labelling will be in force from 13 December 2016. Any voluntary nutrition labelling provided before 13 December 2016 but after 13 December 2014, will be required to be given in the new format.

In England and Wales, with the implementation of the new labelling regime, the primary mechanism for enforcement will be improvement notices rather than prosecutions. However, for food safety requirements and allergen labelling requirements, these may still be dealt with from the outset as criminal prosecutions.

Electronic Cigarettes

Under the Health Act 2006, it is the duty of any person who controls or is concerned in the management of smoke-free premises (which would include a bar, shop, restaurant or pub) to cause a person smoking there to stop smoking. A person who fails to comply with this duty commits an offence.

However, smoking is defined in the Act as smoking tobacco or anything which contains tobacco, or smoking any other substance. Although e-cigarettes contain nicotine, there is no burning and only odourless steam is produced. Therefore, using an e-cigarette in a smoke-free place, or allowing a person to use an e-cigarette would not be unlawful as it is not classed as 'smoking'.

However, you are entitled to prevent the use of e-cigarettes within your premises if you wish to do so for other reasons, such as the effect it may have on other persons within the bar. It has been reported in the trade press that at least two major pub companies (Mitchells & Butlers and JD Wetherspoon) have banned the use of e-cigarettes on their premises to avoid confusion and make things easier for staff.

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