

Welcome to our round up of key licensing issues and developments. It's a bumper issue this month as a lot seems to be happening in the licensing world!

Highlights include:

- Personal Licence Renewals – Abolished
- Locally Set Licence Fees – On Hold
- Deregulation Act 2015 – Other Changes, plus new Entertainment Exemptions
- Licensing Offences – Now Unlimited Fines in Magistrates Court
- Tobacco Display Ban – In Force
- Summer is Coming - Licence Requirements for External Seating/ Drinking

We expect that the news in relation to personal licence renewals and the delayed introduction of potentially higher locally-set licence fees will be good news for many operators. 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.

Abolition of Personal Licence Renewals

The abolition of personal licence renewals is now confirmed. All personal licences which have an expiry date of 1 April 2015 or later will now last indefinitely and no application for renewal will be required (under section 69 of the Deregulation Act 2015, which came into force on 1 April).

However, any licence which expired before 1 April 2015 should have been renewed. If any employee has failed to renew their personal licence in time, an application for a new licence will be required in the normal way, supported by the personal licence holder's qualification certificate, photos, a criminal record check and completed forms. **Beware: if the personal licence of a DPS has expired, there is no authority to sell alcohol unless or until a new DPS is named (or the relevant individual obtains their new licence).**

It remains the case that all personal licence holders must request a duplicate if their licence has been lost or stolen; and if their names or addresses have changed, notifications to the relevant licensing authority are required. It is, of course, a criminal offence not to notify such changes, or of lost licences, in any event. However, it will no longer be necessary to report lost or stolen licences to the police before applying for duplicates with effect from 26 May 2015 (section 72 of the Deregulation Act 2015).

It also remains the case that if any personal licence holder is charged with a 'relevant offence' (as defined under the Licensing Act 2003) he is under a duty to produce his personal licence to the magistrates' court at or before his first court appearance (or at least notify the court of the existence of his licence). The court may order forfeiture or up to six months' suspension of the licence on conviction. The licence holder must also notify the licensing authority of such conviction. If they fail to do so, however, there is no ability for the authority to review/revoke the licence, which is an issue that many local authorities are concerned about.

Locally Set Licensing Fees on Hold

We reported in Spring last year that the government were consulting on the introduction of locally-set licence fees, subject to a national cap. The proposed cap levels represented a five-fold increase on existing fee levels for a number of applications.

However, the Home Office announced on 26 February, that it will not proceed with proposals to allow local authorities to set their own fees under the Licensing Act 2003 at the present time. Instead, they will invite the Local Government Association to provide better evidence of licensing authorities' costs.

The government has, however, decided to consider further an alternative approach to annual fee payment dates, under which licence holders would be able to nominate their own payment date, if they wish, by notifying the relevant licensing authority (as opposed to the proposal being considered previously for a universal payment date). We will report further if and when there is any further news on this.



Deregulation Act 2015 – Other Changes, plus new Entertainment Exemptions

In addition to the abolition of personal licence renewals and removal of the requirement to report loss or theft of a personal licence to the police, the Deregulation Act will make a number of other changes in relation to licensed premises as follows:

1. **From 6 April 2015:** The exhibition of films in community premises will no longer be licensable if certain conditions are met.
2. **From 26 May 2015:** It will no longer be an offence to sell liqueur confectionery to children under 16. There will be no age limit for the purchase of such confectionery.
3. **From 1 January 2016:** The limit on the number of temporary event notices (TENs) that can be held at a single premises per calendar year will increase from 12 to 15. However, there will no changes to the other current limits for TENs: for example, there will still be a maximum of 21 days per annum that can be covered under TENs; and there will still need to be at least 24 hours between the end of one TEN and the start of the next.

In addition from 6 April 2015, entertainment has been deregulated further (under the Legislative Reform (Entertainment Licensing) Order 2014). You may recall that exemptions had already come into play for live amplified music between 8 a.m. and 11 p.m. in alcohol-licensed premises for audiences of up to 200 people; and for unamplified music without any audience limit.

Subsequently, in June 2013, the Government made an Order which meant that plays and exhibitions of dance were no longer licensable between the hours of 8 a.m. and 11 p.m. for audiences up to 500 persons; and indoor sports for audiences up to 1,000 (same times).

Since 6 April, the following exemptions now also apply:

- Live unamplified music between 8 a.m. and 11 p.m. on any premises (i.e. not just alcohol-licensed premises/ workplaces).
- Live amplified music between 8 a.m. and 11 p.m. for up to 500 persons (i.e. an increase from the current 200 person limit).
- Recorded music between 8 a.m. and 11 p.m. in on-licensed premises provided the audience does not exceed 500
- Subject to certain conditions, entertainment provided on local authority premises, at schools, hospitals, community premises, at circuses
- Greco-Roman or freestyle wrestling for audiences up to 1,000 (8 a.m. to 11 p.m.)
- Incidental films

You will still be required to license any entertainment activity after 11 p.m. and most forms of entertainment which are in the presence of an audience of more than 500 people (with a few exceptions e.g. Greco-Roman wrestling as above). Any sexual entertainment will also remain licensable. Boxing and wrestling (subject to the wrestling exceptions above) and combined fighting sports will also remain licensable regardless of proposed audience numbers and the times of the event.

Pre-existing conditions on premises licences relating specifically to relevant entertainment no longer apply during the hours of 8 a.m. and 11 p.m., provided the audience limits aren't exceeded. However, conditions can be added or altered if the licence is reviewed, for example following noise complaints.

Licensing Offences – Introduction of Unlimited Fines in Magistrates Court

We reported in our last edition of Licensing without Hiccups that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the "Act") allowed for changes to magistrates' courts sentencing powers. At that time, section 85, which removed the limit on certain fines, had not been brought into force. However, the section was implemented on 11 March 2015 and therefore now applies.

Under section 85(1) of the Act, for any offence punishable on summary conviction (i.e. in the magistrates' court), a fine previously capped at £5,000 (often referred to in legislation as a 'Level 5' fine or the 'Statutory Maximum') is now be a fine of an unlimited amount. Under the Licensing Act, this includes offences for: the sale of/ allowing sale of alcohol to under-18s; and knowingly allowing consumption of alcohol on relevant premises by under-18s.

In addition, higher caps specified in various pieces of legislation, including the Licensing Act, are now fines of an unlimited amount. This includes: the provision of unauthorised licensable activities (for example the sale of alcohol without a licence, or not in accordance with the conditions of a licence); and 'persistently' selling alcohol to children (twice or more within a 3-month period). Both of these offences were previously punishable on summary conviction by a fine of up to £20,000 (and/ or six months imprisonment in the case of unauthorised activities). For both of these offences, the fine amount is also now unlimited.

Many other offences are included within the section which could be applicable to licensed businesses, including a number of offences under the Food Safety Act which were previously capped at £20,000.

The changes are applicable in England and Wales to offences committed on or after 11 March.



Tobacco Display Ban

From 6 April 2015, the rules banning tobacco displays came into force for small shops and other retailers in England and Wales (for large shops, these rules have applied since April 2012). The changes cover newsagents, pubs, hotels and small shops.

It is now illegal to display tobacco products in the relevant shops and businesses, except to people over the age of 18 years in the limited circumstances set out in the legislation, essentially where a customer has made a request to purchase a tobacco product and you are satisfied that the customer is over 18. There are also limitations on price lists and labels for tobacco products.

Non-compliance is a criminal offence and any person, including shop managers and shop assistants, found guilty of these offences will be liable.

Summer is Coming – Licence Requirements for External Seating/Drinking

With a glorious Easter weekend behind us, your thoughts may be turning to business over the summer period and whether you can make use of an external terrace or garden, or an adjacent pavement, as a 'continental-style' seating area.

However, you need to prepare now if this is part of your business plan. Waiting to see whether the sun is shining is much too late to ensure that you are properly covered! The requirements for licences vary from authority to authority, and indeed can even vary from street to street within a particular authority's area. However, some things to bear in mind:

1. Is the external area on your own land, or part of the highway? If it is on the highway, you would normally need to obtain a street café/ tables and chairs licence from the local authority. You may need to prepare and submit plans showing the relevant area, including the remaining width of the footway.
2. Do you have planning permission to use the relevant area? You may need to provide evidence that planning consent is in place before you can apply for a tables and chairs/ street café licence. You may also need to prove you have consent from the owner if the land is not part of your demise.
3. Is the area within seven metres of a road or footway? If so, you may need to obtain a street trading licence, even if it is on your own land, although some authorities will not allow street trading in certain locations.
4. Is the area covered under your premises licence? If not, although the consumption of alcohol is not restricted in external areas (if you have authority for 'off sales'), the sale of alcohol will be unlawful.

Whatever the requirements under your local authority, there will be minimum periods of notice, so if you haven't already make sure you get applications in for the summer without delay.

Contact

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