

Welcome to another edition rounding up the current key issues and developments for businesses providing alcohol, entertainment and food. Highlights include:

- Rugby World Cup Fever – Licensing Considerations
- Alcohol Wholesaler Registration Scheme – Coming Soon
- 2016 Temporary Event Notice Limits – Increase
- Sunday Trading Consultation
- Late Night Levy Watch – Liverpool City Council
- Crane Machines – Gaming Not Skill
- Immigration Bill 2015-16 – Proposed Licence Provisions
- Breathalyser Schemes – Coming to a Bar Near You?
- Dangerous Cocktail – £100,000 Fine

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.

Rugby World Cup Fever – Licensing Considerations

It is difficult to escape the fact that the Rugby World Cup is being hosted in the UK this autumn and we are already excited at the prospect! The tournament got underway on Friday 18 September and hopefully you will already have applied for any Temporary Event Notices (TENs) to cover additional hours or activities you plan to offer in the run up to the final on 31 October.

If you haven't, but want an extension or changes for matches still to come, remember that you need at least five clear working days for a short notice TEN; or 10 clear working days for a standard application. With a short notice TEN, if there is a representation, the application is refused without a hearing, so the more notice you can give the better!

If you are planning on showing some or all of the matches, it may be sensible to:

- Check the conditions on your premises licence to ensure that you will not be in breach, in particular in relation to any occupancy restrictions or conditions which may apply when you show televised sporting events.
- Carry out risk assessments. Depending on the nature and location of your venue, consider whether additional safeguards are required, such as the use of plastic glasses, SIA door supervisors, dispersal arrangements, and/or enhanced ID policy.

- Ensure that CCTV cameras and recording systems are in full working order.
- Remind staff to record all refusals on the basis of age and/or drunkenness: this can be useful evidence in the event of any actual or threatened enforcement.

The British Beer and Pub Association has produced a guidance booklet, with the support of the Local Government Association and the National Police Chiefs' Council, on managing Rugby World Cup success. They stress the importance of staffing requirements, including staff briefings, assessing the risks and planning accordingly in advance. A copy of the guidance is available on the [BBPA website](#).

Let's hope business is good and the home nations prosper!

Alcohol Wholesaler Registration Scheme – Coming Soon

Overview

Between 1 October and 31 December 2015, all existing alcohol wholesalers will be required to apply to HMRC to register for the Alcohol Wholesaler Registration Scheme (the "Scheme"). Next year, HMRC will start to review those applications to decide whether the wholesale businesses pass the "fit and proper" test and can be accepted onto the register.

New wholesalers (who intend to commence trading after 31 December 2015) must apply for registration at least 45 days before they intend to start trading. Those businesses will not be permitted to trade until HMRC have assured they are "fit and proper".



The key date for all other businesses (i.e. non-wholesalers) which trade in or retail alcohol is 1 April 2017. From that date, you will be required to check that any UK wholesalers you buy from are registered under the scheme. In the meantime, you may want to check that your suppliers are aware of the need for registration. It will be an offence to buy alcohol from a UK wholesaler who is not approved after 1 April 2017, if you know or have reasonable grounds to suspect that they are not an approved person in relation to the sale (*Finance Act 2015*, section 88G (4)).

Meaning of Wholesaler

If you are not sure whether or not your own business will be classified as a “wholesaler” for the purposes of the scheme, it is important to consider the definition in the *Finance Act 2015*, section 88A(3). This provides that controlled liquor is sold “wholesale” if:

- The seller is carrying on a trade or business and the sale is made in the course of that trade or business; and
- The sale is to a buyer carrying on a trade or business, for sale or supply in the course of that trade or business.

The quantity sold is irrelevant: the sale can be of any quantity. However, it will not be considered as a “wholesale” sale if:

- It is an incidental sale (i.e. incidental to a retail sale authorised by a premises licence);
- A group sale (i.e. between members of the same corporate group); or
- An excluded sale (which is not defined within the Act itself but may be prescribed by regulations in due course).

The Act specifies that the Commissioners may make provision as to the cases in which sales are or are not to be treated as wholesale sales, incidental sales, authorised retail sales, or group sales, but there are no further regulations on this to date. Therefore, if you believe that your business may be caught by the definition in the Act, it would be sensible to seek advice at an early stage and certainly prior to 31 December.



2016 Temporary Event Notice Limits

A reminder that the number of temporary event notices (TENs) per premises per annum will increase to 15 next year (from the current limit of 12). The change was made under the Deregulation Act 2015, as reported in our last issue of [Licensing Without Hiccups](#).

Remember that the other limits for TENs will continue to apply. In particular, 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. Remember too that a TEN which covers an event running into the early hours of the following morning (for example, from 7 p.m. until 2 a.m.) will count as two days for the purposes of the TEN limits, as a “day” finishes at midnight.

Sunday Trading Consultation

Retailers among our readership will no doubt be aware of the Government Consultation on a proposal to amend current restrictions on opening hours for large stores (over 280 square metres) on Sundays. Under these restrictions, stores can only open for a maximum of six hours between 10 a.m. and 6 p.m.

The Government is proposing a relaxation of this requirement, where local authorities (or metropolitan mayors) would be able to extend trading hours. We will, of course, need to await the outcome of the consultation before any decisions are made, but in the meantime, be prepared for the potential change by applying for longer hours than you can currently trade on Sundays in any new licence or variation applications for large stores. In due course, if the law is relaxed, you will also need to review any current restrictions on hours under your licence, if you intend to open longer.

Late Night Levy Watch – Liverpool City Council

Liverpool City Council is proposing to introduce a late night levy for all premises which are licensed to allow the sale of alcohol between midnight and 6 a.m. (with the only exception being New Year’s Eve) and they have approved plans to launch a formal consultation.

The introduction of a levy means that licence holders for all such premises will be 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). If approved, it is intended that the levy would come into force in June 2016.

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

Crane Machines – Gaming Not Skill

The Gambling Commission has clarified that crane machines must be properly licensed as category D gaming machines where those machines use a compensator unit to determine the percentage payout. Such machines cannot be categorised as “skill” machines (for which no licence is required).

Crane machines are those machines with mechanical “grab” arms, historically found in family entertainment centres, with soft toys as prizes (although some also offer items such as jewellery and cash). The Commission has identified a recent trend for these machines to be sited in pubs, shopping centres, motorway service stations and similar venues, without the appropriate permission for gaming machines, although such permits should have always been in place.

The Commission set out a timetable in July by which the relevant permissions must be applied for (31 August) and granted (31 December). Therefore, if you have crane machines in your business, you should check now that those machines are properly authorised, regardless of whether or not you have been contacted by your local licensing authority to date.

Immigration Bill 2015-16 – Proposed Licence Provisions

Immigration is not usually an issue that is readily associated with licences for the sale of alcohol, entertainment and/ or late night refreshment. However, the recently published *Immigration Bill 2015-16* includes a number of proposed amendments to the *Licensing Act 2003*.

The Government has said (in its “Factsheet – Illegal Working”) that Immigration Enforcement often encounters illegal working in off licences or late night refreshment establishments. They say that they are going to “*impose tougher penalties and sanctions on rogue employers who exploit illegal migrants for their own gains*” and will “*ensure that licences for the sale of alcohol and late night refreshment are held by those who comply with immigration laws*”.

The proposed changes, if implemented in full, will be relevant to both individual holders of premises licences and to personal licence holders and include the following provisions:

- There will be a right of entry to licensed premises to investigate immigration offences, together with amendments to the existing offences of the employment of illegal immigrants.
- UK residents will be disqualified from applying for a premises licence or an interim authority if they are not entitled to work in the UK; and any premises licence held by a UK-resident individual will lapse if that individual ceases to be entitled to work in the UK.

- Notice of applications for transfer and interim authority will be required to be given to the Secretary of State, who will be entitled to give a notice to the licensing authority within 14 days that the exceptional circumstances of the case would be prejudicial to the prevention of illegal working. Where such a notice has been given, the authority will be required to reject the application if it considers appropriate to do so.
- A personal licence will not have effect if the licence holder ceases to be entitled to work in the UK.
- The licensing authority will be obliged to notify the Secretary of State if a personal licence holder has been convicted of an immigration-related offence subsequent to the grant of a licence (who within 14 days is entitled to give the authority a notice stating the reasons for being satisfied that the continuation of the licence would be prejudicial to the prevention of illegal working in licensed premises).
- Illegal working closure notices are proposed for a period of up to 48 hours if immigration offences are being committed, although the closure may be cancelled if the employer demonstrates that they have conducted right to work checks where illegal workers have been identified.

At least some of the changes to the Licensing Act proposed in the Bill are perhaps more aimed at sending a “tough message” than making a real difference to illegal working. Given that personal licences are not required for late night refreshment only licences, it is difficult to see how the changes to the personal licence provisions will impact on food takeaways identified in the Government Factsheet as a problem. Clearly, those takeaways that close at 11 p.m. will not be affected in any way, as no premises licence would be required (unless they also sell alcohol).

For those who operate off-licences (the other business type where illegal working is often encountered according to the Factsheet) in our experience, it is not generally the employees who hold the premises licence. The licence holder will often be a company, or if a sole trader business, the owner. It is also usually the case that not all employees will apply for or hold personal licences. Even where there are employees with a personal licence, if they are subsequently convicted of an immigration offence, there is no guarantee that their personal licence would be revoked following conviction. This will depend whether the individual complies with the requirement to notify the court they are a personal licence holder. The licensing



authority may not even know that the individual has been convicted of an immigration offence: they will only be made aware if they are notified by the court and/or the individual of the conviction.

In summary, the proposed changes to licensing may have a very limited impact in practice on illegal working, but responsible operators will of course need to continue checking that employees have the right to work in the UK, not least because the *Immigration Bill 2015-16* will extend the existing criminal offence of knowingly employing an illegal migrant to apply where an employer has "reasonable cause to believe" that a person is an illegal worker. The penalty for conviction on indictment for this offence would also increase from two to five years.

If the changes are implemented in full, operators will need to be aware that premises licence transfer applications and interim authority notices must be notified to the Secretary of State. You will also need to remember that if a personal licence holder does cease to be entitled to work in the UK, you will need to check there is a sufficient coverage of other personal licence holders and make an immediate application to vary if the relevant individual is named as Designated Premises Supervisor on your premises licence (you may want to ensure HR teams are briefed accordingly to make you aware of any anticipated work permit expiry dates). However, at the moment, the Immigration Bill is at a very early stage of its passage through Parliament: the second reading is due on 13 October. We will report further in our next issue.

Breathalyser Schemes – Coming To A Bar Near You?

There have been a number of reports in the trade press recently around "voluntary" breathalyser schemes being introduced in various areas across the country. The schemes involve pubs and clubs agreeing to breathalyse customers on entry to help them to manage drunkenness (by refusing entry to customers who had drunk too much either at another venue or by "pre-loading" at home). The schemes are typically promoted by local police and / or Councils.

Schemes have been running in Cornwall, Norwich, York, Nottinghamshire, Leicestershire and Birmingham. The Metropolitan Police have recently announced they intend to extend schemes in 12 London boroughs, including Westminster, Islington and Kensington and Chelsea, until next year.

Whether or not these schemes will be workable long-term is open to debate. There have already been reports of authorities requesting that breathalysers be used in pubs where there is no history at all of violence. Furthermore, customers may not like being breath tested if the schemes are rolled out to venues indiscriminately. There are, as yet, no indications that authorities are requesting use of breathalysers to be a condition of new licence or variation applications.

Dangerous Cocktail – £100,000 Fine

You may have read in the press about the wine bar in South Yorkshire which served a "nitro-Jagermeister" (a cocktail containing liquid nitrogen) to a girl celebrating her 18th birthday in October 2012. The girl later had to have her stomach removed in emergency surgery as a result of drinking the cocktail.

The Food Standards Agency had warned back in September 2012 that the extreme cold temperature of liquid nitrogen makes it unsafe for people to drink and eat because the human body is unable to cope with such a cold internal temperature. The bar itself had been warned about the use of liquid nitrogen by a Health and Safety Officer around five months prior to the incident.

There are a number of legal duties and potential remedies in a case such as this. Food manufacturers, retailers and other food business operators in the UK have a legal duty to ensure that all food (including drinks) served to the public must not be unsafe (i.e. injurious to health or unfit for human consumption); as well as duties for employers under health and safety legislation to carry out risk assessments of health and safety risks and ensure the safety of employees and other persons. Remember too that "public safety" is a licensing objective and therefore if you fail to promote public safety, your premises licence could be reviewed and ultimately revoked. In this case, injury to a young girl could have been prevented by properly assessing the risks in advance and by following advice from the regulators received some months previously.

The company operating the bar was prosecuted by Lancaster City Council following the incident and was sentenced on 17 September 2015, after pleading guilty under section 3 of the Health and Safety at Work Act 1974. The company was fined £100,000 and ordered to pay £40,000 in costs.

Contact

For further advice, training, or copies of our previous newsletters, please contact:



Stephanie Perraton

Partner

T +44 121 222 3559

E stephanie.perraton@squirepb.com



Nicola Smith

Senior Associate

T +44 121 222 3230

E nicola.smith@squirepb.com

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