



Licensing Update – December 2011

BRIEFING

Introduction

From July to September 2010, the Home Office conducted a public consultation exercise on the rebalancing of the Licensing Act 2003.

A package of measures to overhaul licensing and tackle alcohol-fuelled crime and disorder were taken forward in the Police Reform and Social Responsibility Bill. The Bill received Royal Assent on 15 September 2011 and is now the PRSR Act 2011 (the “2011 Act”).

Key measures in the 2011 Act include the following:

- Licensing Authorities, Primary Care Trusts and Local Health Boards to become a “responsible authority”.
- Introduction of a Late Night Levy.
- Early Morning Alcohol Restriction Orders.
- Reducing the evidential burden on Licensing Authorities.
- Removing the vicinity test for representations.
- Power for Licensing Authorities to set fees.
- Suspension of licence for non-payment of annual fee.

Licensing Authorities and Primary Care Trusts as a “responsible authority”

The 2011 Act introduces amendments to the Licensing Act 2003 to bring relevant licensing authorities and primary care trusts within the definition of a “responsible authority”.

The proposed change would allow licensing authorities and primary care trusts to apply for reviews and make representations in relation to the grant or variations of a premises licence.

The amendments proposed are controversial in that it will remove the independence of the licensing officer when advising a licensing committee or in assisting parties during the representation period.

Introduction of a Late Night Levy

Licensing Authorities have been granted the power to introduce a “late night levy” in their areas. The levy will be payable by premises authorised to supply alcohol during the late night supply period (a time determined by the licensing authority but this must be between midnight and 6 am).

Under the terms of the 2011 Act, the levy is imposed on all premises in the licensing authority’s area and there is no distinction between well run premises and premises which have been problematic to the local community.

Prior to introducing the levy in its area, a licensing authority must allow any person with a potential



liability to pay a levy to apply to vary their licence or certificate with the effect that the person ceases to be liable, without incurring the fee which would ordinarily be payable.

A Home Office minister has indicated that exemptions/reductions may be available for operators who are members of local schemes such as Purple Flag, Pubwatch and Best Bar None.

Introduction of Early Morning Alcohol Restriction Orders (EMROs)

The 2011 Act introduces the concept of EMROs which allow a licensing authority to prohibit the sale of alcohol for certain hours between midnight and 6am. EMROs can apply to the whole of the licensing authority's area or just to a particular part.

Under the 2011 Act, businesses which applied for their late trading hours and have subsequently traded responsibly in accordance with the Licensing Act 2003 will be penalised if their business falls within one of the areas covered by an EMRO.

If granted, there is a risk that the introduction of EMROs on licensed premises will result in migration from one area to another and exacerbate late-night drinking in streets and parks due to the unavailability of venues previously visited.

Lowering the evidential hurdle

Currently, Licensing Authorities when making decisions on new and existing licences are required to demonstrate that their decisions are "necessary" to promote the licensing objectives.

The 2011 Act replaces "necessary" with "appropriate".

This provision applies in relation to applications for new licences, variations, transfers and reviews.

This change will inevitably result in conditions or decisions that are ill-conceived and will have little (or no) impact in meeting the licensing objectives.

Removal of the Vicinity Test

The 2011 Act will remove the test of "vicinity". This enables any person to make representations.

It is likely that this will give a disproportionate influence to non-local individuals, businesses and possibly pressure groups.

Changes to Temporary Event Notices (TENs)

The 2011 Act extends the right to object to a TEN to the Environmental Health Authority and allows the Police and the Environmental Health Authority for the area in which the premises are situated, to object to a temporary event on the grounds of all four licensing objectives.

The period for which licensable activities can be carried on under a TEN has been extended from



96 to 168 hours. The number of days in any calendar year on which a single premises can be used to carry out licensable activities in accordance with a TEN has also been extended from 15 to 21 days.

The timescale in which a relevant person can object to a TEN has been extended from 2 to 3 working days.

There is a new procedure which enables an operator to give a limited number of TENs in a shorter timeframe than that which applies to the existing TEN process. This is defined as a "late temporary event notice".

Power for Licensing Authorities to set fees

One of the most significant changes is the proposal to allow Licensing Authorities to set their own fees.

However, there is likely to be a cap on what Licensing Authorities will be able to charge. We understand that a cap of 20% above the existing statutory fees is being proposed.

The obvious concern is that Councils will see the new power as a way to raise funds in this difficult economic climate.

Suspension of licence for non-payment of annual fees

The licensing authority must suspend a licence or certificate if the annual renewal fee is not paid.

The suspension will then last until the fee is received by the licensing authority. There is a grace period of 21 days where the suspension will not take effect, but only if the failure to pay the fee when it was due was as a result of an administrative error or if the licence holder notified the authority that it disputed either liability for or the amount of the fee.

We fear chaos here!

Fine increase and Closure Notices

The fine for persistently selling alcohol to children is to be increased from £10,000 to £20,000.

The period that can be imposed in a closure notice for persistently selling alcohol to children is to be increased from a maximum of 48 hours to any period between 48 hours and 336 hours.

Further changes

The definition of "relevant offences", which must be declared on an application for a personal licence and which may be taken into account in determining the application, has been extended.

Commencement Dates

The Home Office originally indicated that the majority of the changes could be implemented as soon as April 2012. However, we understand this has been moved back to October 2012 at the earliest.



Deregulation of Regulated Entertainment

In September 2011, the Department of Culture Media and Sport published a consultation on the “deregulation” of regulated entertainment under the Licensing Act 2003.

The Government’s proposal is that the performance of “regulated entertainment” for an audience of less than 5000 people should, subject to certain safeguards, not require a licence or permission. This would include all regulated entertainment save for boxing wrestling and performance of dance that may be classed as sexual entertainment.

The outcome of this consultation is unknown but likely to be end of 2012/early 2013.

Private Members Live Music Bill

The Private Members Live Music Bill seeks to amend the Licensing Act 2003 with respect to the performance of live music entertainment.

The Bill is now progressing through the House of Commons and appears to have the backing of the Government.

The Bill provides that live music will NOT be licensable if:

- The premises is authorised for the sale of alcohol for consumption on the premises;
- During the live music the premises are open for on-sales of alcohol;

- The live music will not be performed to an audience of more than 200 people; and
- The live music will take place between 8 am and 11pm.

If you would like further information on the proposed changes and how the changes may affect your business please contact Robert Botkai.

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