

April 2017

Thomas & Thomas E-News

House of Lords Review of Licensing Act 2003

The House of Lords has published its report on the post-legislative scrutiny of The Licensing Act 2003. Below is a brief summary of the main **recommendations**:

- There should be a trial merger of Licensing Committees and Planning Committees. This is not a merger of licensing and planning law that is recommended, but rather Councillors who sit on Planning Committees consider licensing applications;
- Licensing Committees should take planning into account and, where appropriate, follow any relevant decision given by a Planning Committee, and vice versa;
- The equivalent of The Planning Inspectorate, which hears planning appeals, to hear licensing appeals, rather than the Magistrates' Courts;
- Early Morning Restriction Orders should be repealed;
- Late Night Levies also be repealed and, if not, the pending amendments to Levies should be reviewed and the legislation abolished unless an affirmative resolution is passed for Levies to continue. If they do continue, the proceeds to be split 50/50 between Police and Councils;
- Applicants should not need to give notice by advertisements in the local newspaper, but notices should be given prominently by online notification systems run by the Local Authority;
- An application for a Premises Licence should be accompanied by a disabled access and facilities statement;
- Licensing Authorities should be given the power to object to Temporary Event Notices;
- The provisions relating to Community and Ancillary Sellers Notices should not be brought into force and should be repealed;
- Put Cumulative Impact Policies onto a statutory footing;
- A full Agent of Change principle be adopted in both planning and licensing guidance to help protect existing licensed premises and local residents from the consequences arising from any new build development in their nearby vicinity i.e., those developing or changing a land use would have to take into account the nearby properties and their functions, and take mitigating steps should they impact upon the development or building work planned (see below);
- Licensing fees should be set locally to reflect the fact that the cost of administering the Act varies from place to place;
- The Licensing Act 2003 be amended so that it applies airside at airports, ports and hoverports, so that premises providing licensable activities would require a Premises Licence that are airside or portside.

Our submissions can be read at [T&T HOL Submission](#).

General Election TENS

Please contact one of the partners if you would like to apply for later hours during the election night on 8 June 2017. Temporary Event Notices (TENS) can be used to extend permitted hours for special events, subject to an annual maximum of 21 days. Please remember TENS should ordinarily be submitted at least 10 working days before the event.

Hackney Late-Night Levy

Hackney are consulting on the introduction of the late-night levy. The levy would apply to premises that are authorised to sell alcohol any time between midnight and 6am. The amount of the levy is calculated on the premises' rateable value – likely an annual fee of between £299 and £1,259.

Hackney are **not** proposing exemptions to hotels or premises only authorised to sell alcohol past midnight on New Years' Eve. Operators will be given the opportunity to vary their licence free of charge to reduce their hours and therefore avoid the levy. However, once those hours are reduced there is no guarantee of successfully reinstating the hours in the future.

Operators wishing to make representations in respect of the levy have until 7 May 2017: [Hackney Late Night Levy](#). It remains to be seen whether the House of Lords recent criticism of the levy (above) will impact on Hackney's proposals, before the levy's scheduled start date on 1 November 2017.

"Agent of Change"?

The Night club industry has been advocating for the Agent of Change principle (established in Australia) for several years, most recently in relation to Ministry of Sound.

Under the principle, the person responsible for the change is responsible for the impact of the change. So, if a music venue is operating before a residential building, the residential building developers would be responsible for paying for any soundproofing needed. Likewise, if a new music venue opens in a residential area, the venue would be responsible for the cost.

As of 6 April 2016, Local Planning Authorities now have to consider noise impacts on new residents from existing neighbouring businesses when considering new residential developments. Under this principle, developers will need to ensure that due regard is had to existing music venues. As always, consultation and co-operation is key.

Immigration Act 2016

It is now a requirement for individual applicants of a premises licence to be entitled to work in the UK. Existing premises licence holders who cease to be entitled to work in the UK will be at risk of their licence lapsing, unless they submit an interim authority notice within 48 hours and subsequently transfer the licence within 28 days. Individual licence holders will need to provide evidence they are entitled to work in the UK when making a new premises licence application.

The Secretary of State is now a Responsible Authority, meaning that representations could be made against relevant new, variation and transfer applications there are *"exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises"*.

Personal licence holders and DPS's will also need to be entitled to work in the UK. If their right to work in the UK ceases, the personal licence will lapse. Where the DPS's personal licence lapses, the sale of alcohol from the premises immediately becomes unlawful. Where a new DPS is appointed, either as part of a new premises licence application, or an application to appoint a new DPS, a declaration needs to be signed confirming the right to work in the UK.

Immigration officers also have new powers to issue illegal working closure notices if the premises are employing workers in breach of the Immigration Act 2016.

Operators should therefore be encouraged to take a proactive approach when vetting employees' immigration and right to work status.

So, where can a man get a drink in this town?

As many readers will already be aware, virtually every council has what has been commonly known as a cumulative impact policy or special policy area. This creates a presumption that certain types (or all types) of new licences and variations will be refused within such an area. That is unless they can demonstrate that they would not be adding to the cumulative impact of such licensed premises already there. Not an easy task you may say.

To date, this has just been a creature of guidance and policy. However, the government want to make the status of cumulative impact policies statutory. In other words, they now have more force.

Whilst the House of Lords want to abolish it, the government have also changed the legislation for late-night levies so that these can be for smaller geographical areas (rather than the whole local authority). This may well encourage more councils to consider one. In addition, late-night refreshment, as well as the sale of alcohol, can now trigger a levy where late-night refreshment is later than the sale of alcohol. This is commonplace on many licences where the sale of alcohol finishes at midnight, and is therefore not subject to the levy, but late-night refreshment finishes half an hour later and so that now would make the licence subject to it. At first blush that might seem to be a good thing, but in reality it will mean that other councils such as Westminster will feel more able to impose a levy, usually creating an additional fee of up to £2,000 a year.

In the not too distant future, other areas of London may become cumulative impact areas too. As arguably the world's restaurant capital with a diverse range of cuisines and the highest of qualities, London is increasingly becoming less attractive to restaurateurs. All this for the sake of a minority who believe that restaurants have a detrimental impact on local amenity whereas all of the empirical studies have proved this to the contrary. This is bad news for all of us Londoners and tourists alike, foodies and indeed anyone who enjoys even having the option of a post dinner drink.

Which brings me back to my first question, where can a man (or indeed a woman) get a drink in this town? The answer is, in Westminster, Camden, Islington and Hackney, if you're lucky, only with a meal and only until midnight. If they catch you out, you will lose more than your glass slippers!

And what we've been doing ...

- In the St James's Market development, [Duck & Waffle Local](#) and [Veneta](#)
- For the Experimental Cocktail Club, the [Henrietta Hotel](#) in Covent Garden and the [Chess Club](#) in Mayfair
- Licensing Jack Wills in Carnaby for the sale of alcohol ancillary to its retail use
- From the same people as [Sushi Samba](#), their new market concept at Centrepont and also their new restaurant in Covent Garden Piazza
- Xavier Rousset's [Comptoir](#) in Weighhouse Street and Margaux's [Bar Margeaux](#) in Blandford Street

Thomas & Thomas Partners Annual Seminar 26 June 2017

We are proud to announce the date for our annual seminar. It's early evening on [26 June 2017 at The House of St Barnabas](#). Please let one of the partners know if you would like to attend.

If you have any queries in respect of the above or any other matter, please contact one of the partners

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