

August 2012

Thomas & Thomas E News

Autumn generally brings chills and rain and in the case of licensing reform, it's pretty similar. In October Local Authorities can start consulting on whether to introduce Early Morning Restriction Orders and Late Night Levies.

Early Morning Restriction Orders ("EMROs")

The new legislation will allow Local Authorities to make an EMRO, **which prohibits the sale of alcohol in specified areas anytime between midnight and 6am.** The Order can apply to all premises, regardless of whether they have individually caused a problem or transgressed the terms of their licence.

The Government is still consulting on the content of the supplementary guidance to EMROs. Operators should be aware that all licensed premises in a designated area will be caught by the EMRO. There are very limited exemptions, for example hotels with mini-bar facilities. This means restaurants, as well as bars and clubs, will be subject to EMROs.

Licensees will have 42 days to make relevant representations against a proposed EMRO. We anticipate representations will be considered and heard by the Local Authorities' Licensing Sub-Committee. It is not yet known how much weight will be given to these representations, so operators within a proposed EMRO area should consider a coordinated lobbying effort. If and when such consultation takes place in your area, we would encourage you to make strong representations against the passing of such an order, the effect being, if passed, that **if you have a licence beyond midnight, you will be automatically cut back to an hour as early as midnight.** There is no appeal and no hearing.

Thomas and Thomas invite your comments on group representations or perhaps even legal challenge if certain local authorities make such a move. It is currently rumoured that Lambeth at least are making such plans. Islington at least are keen to reduce late-night uses; Camden are considering a levy.

Late Night Levies

In addition to EMROs, Local Authorities will be able to charge a Late Night Levy on premises trading anytime between midnight and 6am.

It is anticipated this 'late night tax' will prove popular with Local Authorities wanting to raise extra finances. The Government is consulting on how to control where this money is spent, as it is currently unclear whether Local Authorities will be required to spend the money directly on controlling late night venues or on other unrelated uses. Other points to note are:

- It is not clear what the penalties are for non-payment of the Levy.
- Local Authorities will be able to offer a 30% discount to smaller premises and members of best practice schemes.
- Restaurants and private members' clubs will not be exempt.
- There is no exemption for empty licensed premises.
- The Levy will not apply on New Year's Eve.

Again, it is vital to challenge any such proposals.

Live Music Act 2012

On a more positive note, the Live Music Act is due to come into force in October. The new Act will mean the following activities do not require a Licence:

1. unamplified live music taking place between 08:00 and 23:00; and
2. amplified live music between 08:00 and 23:00 before audiences of no more than 200.

The Act also provides an **exemption** as regards existing Licence conditions relating to live music, providing the premises complies with points 1 or 2 above.

Tables, Chairs & A-Boards – Enforcement in London Boroughs

We've seen an increased amount of enforcement proceedings brought against operators in respect of outside seating and A-Boards on the street. While this was expected during the Olympics, it remains to be seen if this tough stance will be maintained. If you intend to place tables and chairs outside your premises you may require planning consent and a tables and chairs licence.

We were recently instructed in respect of a decision by the Royal Borough of Kensington and Chelsea to refuse a well established restaurant's application for a tables and chairs licence. A number of issues arose during the dispute with RBKC, in particular whether the outside seating area formed part of the public highway and therefore did not require a licence.

If your outside area is not part of the public highway, you may not require consent to place tables and chairs in this area. You will need to demonstrate that the area does not form part of the public highway. This may be achieved by demonstrating the area forms part of your demise or that the public's access to the area has been restricted for an extended period of time.

CCTV & Data Protection Act Registration

A Lancashire Licensee has been successfully prosecuted for failing to register the use of his CCTV system with the Information Commissioner's Office ("ICO"). Operators using CCTV are required to notify the ICO of the way they handle personal information, which includes the collection of patron's images by CCTV.

Failure to notify the ICO could result in a breach of the Data Protection Act resulting in a criminal offence. More information on how to register your business with the ICO can be found [here](#).

Paralympics Screenings

Following the success of the Olympics, many operators may be seeking to screen the Paralympics at their premises too. The same strict rules apply for advertising screenings, even the type of posters permitted to advertise the games. There are also restrictions on restaurants and chains of the premises showing the Games. More information can be found here: [Olympics Screening](#).

Recent Work

The Thomas & Thomas team have been busy working on a number of exciting projects. A few highlights include:

- Successfully applying for a Premises Licence for the **Forever Crazy** production on Southbank. The show starts in September and represents the first time the Parisian **Crazy Horse** show has been brought to London.
- Completion of various Licence applications for special Olympics uses at **Westfield Stratford**.
- Licensing premises and public realm spaces at the heart of the new **Kings Cross Development**, including **Granary Square**.
- Continuing to advise newly opened **5 Hertford Street** and finalising planning and licensing consents for the **House of St Barnabas**
- The opening of **Sushi Samba** in Bishopsgate
- Helping to organise the 10th anniversary street party for **Jamie Oliver's Fifteen Foundation** (*pro bono*).

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

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