

February 2014

Thomas & Thomas E News

Government “Deregulation”

With talk of Late Night Levies, Early Morning Restriction Orders and Expedited Reviews affecting the industry, the Home Office has proposed some quite astonishing proposals for deregulation! These include:

- Decriminalising the offence of selling liqueur chocolates to a person under the age of 16.
- Removing the need to report a lost Personal Licence to the Police before obtaining a duplicate from the Licensing Authority.
- Increasing the number of Temporary Event Notices (“TENS”) from 12 to 15 per annum in 2016 (subject still to an aggregate total of 21 days).
- Abolishing the need to renew Personal Licences.

The last proposal is obviously the only one that makes any sense whatsoever. The first Personal Licences were granted in 2005, meaning a significant number are up for renewal in 2015. Whether the renewal requirements are abolished, or Personal Licences scrapped altogether, operators should expect local and central government to increase training requirements in substitution.

Expedited Reviews

Landlords and tenants alike should be aware and scared of the consequences of the Police submitting an Expedited Review. This has become a very common tool in Westminster for the Police to close down premises within days which, in their view, are not promoting the Licensing Objectives.

To be fair, there are quite proper cases to exercise this power. For example, the Police recently successfully applied to suspend and thereafter revoke the Licence of a West End nightclub. There had been a shooting in the nightclub in question, due to unarguable failings of the Licence holder.

However, for some operators, the effect of an application can be devastating. In another case, a premises was closed where the door staff had been handling stolen property. The Licence holder was apparently unaware. The Licence was revoked notwithstanding a 20 years’ unblemished record and the fact that the Licence had since been transferred to the landlord and the lease forfeited.

Landlords should be aware of such risk and take precautions and advice to protect their interest by way of a Shadow Licence in appropriate cases. Please refer to our [October 2013 E News](#) for a reminder on Shadow Licences.

A Case Study - What happens to Interim Steps on Appeal?

The High Court has recently clarified a well disputed question under the Licensing Act – what happens to Expedited Review Interim Steps when the full review decision is appealed? An example case study:

- After a serious incident of crime at a premises the Police apply for an Expedited Review of the Licence.
- Days later the Licensing Sub Committee suspend the Licence as an Interim Step.
- The Licence remains suspended until a full review hearing some weeks later.
- At the full review hearing the hours are reduced.
- The Licence holder appeals the decision.

Before the High Court's decision, it was unclear what happens to the Licence pending the determination of the appeal. Does it:

- a. Revert back to the position before the Expedited Review, i.e. the premises is allowed to continue trading?; or
- b. Revert back to Interim Steps, i.e. a suspension?

Unfortunately for operators, the High Court determined the answer is (b). In the example above, if the Licence holder appealed the reduction in hours, the premises would have to close for months until the appeal is determined. Not surprisingly, the decision is welcomed by the Police and Local Authorities, meaning problem premises can not re-open by simply submitting an appeal.

Lambeth EMRO

Lambeth have a proposed an Early Morning Restriction Order ("EMRO"), which catches just four premises. If approved, the EMRO will impose a blanket restriction on opening after midnight for the premises within the designated area. The EMRO hearing was adjourned last month to allow more time for evidence. We understand there were four times more representations against the EMRO proposal compared to representations in favour.

If an EMRO is proposed in your area it is essential you make a formal response to the consultation. A recap on EMROs can be found in our [August 2012 E News](#).

Late Goal for World Cup Late Licence Proposal?

The British Beer and Pub Association's ("BBPA") bid to allow an automatic extension of all Premises Licences for the World Cup was recently rejected. However David Cameron stepped in with a last minute save, indicating the proposals would be allowed. If permitted, the extension will automatically permit additional hours during the evening of England's opening match in this summer's Football World Cup.

The proposal is made under the same legislation that permitted extended hours during the Queen's Jubilee, with no requirement for a TEN. Even if the bid is unsuccessful, operators can still operate later during the World Cup by submitting a TEN.

Local Government Association ("LGA") Proposals for Licensing Reform

The LGA has proposed an overhaul of the Licensing regimes covering taxis to Premises Licensing. The outline recommendations include:

The negatives:

- Introducing a fifth Licensing Objective - The Protection of Public Health. This is not a new suggestion and already exists in Scotland. Its implementation would provide another obstacle for operators, particularly for drink led businesses.
- A requirement that new food businesses must pass an inspection before commencing trading.

The positives:

- A new single Licence covering Regulated Entertainment, the sale of alcohol, food business registration and external tables and chairs.
- Temporary Licences, for example outside tables and chairs licences, to existing in perpetuity. This will be particularly welcome for Westminster operators, who currently have to renew every 6 months.

What we have been doing

- Obtaining outline licensing for the **Broadgate Central** development in the City of London and for **Crossrail** in Canary Wharf.
- Advising on the redevelopment of **Walkers Court** in Soho.
- Advising several landlords in relation to **Expedited Reviews** against their tenants.
- Obtaining Licences for **Roka** in Aldwych and Mayfair.
- Obtaining a Premises Licence for the new **Big Easy** in Covent Garden.

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

Alun Thomas

E: athomas@tandtp.com

T: 07956 805464

Thomas O'Maoileoin

E: tomaioleoin@tandtp.com

T: 07786 966173