

June 2012

Thomas & Thomas E-News

Ready, Set, Go!

The law has recently changed to allow more Temporary Event Notices. If you wish to add additional licensable activities or extend your licensed hours over the summer, please make sure you do so in plenty of time. Some key application deadlines are as follows:

- Olympic opening ceremony 12 July 2012
- Olympic closing ceremony 27 July 2012

For the **Queen's Jubilee weekend**, there is an **automatic** extension of your licence to 01:00am on the following nights:

- Friday 1st June; and
- Saturday 2nd June.

It may be possible to apply for a new "late TEN" for the Jubilee weekend but please act quickly! Premises Licences authorising licensable activities later than 01:00am are unaffected.

Read it and weep! Important amendments to the Licensing Act 2003 now in force

We've reviewed the new legislation in previous editions of our E- News . A quick reminder of the headlines:

Effective 25 April 2012:

1. **TENs:**

The bad news:

- New powers for Environmental Health Departments to object to TENs.
- Police and Environmental Health now have three working days to object.
- Objections and counter notices permitted based on all four licensing objectives.
- Licensing Authorities will be able to impose conditions on TENs.

The good news:

- The period of each TEN is to be increased from 98 hours to 168 hours (1 week), subject to an extended maximum of 21 days of TENs each year.
- The ability to apply for a limited number of 'late' TENs – no later than 5 working days before the event. Personal Licence holders can apply for up to 10 late TENs per year. Please bear in mind we're being asked by the Police to demonstrate exceptional circumstances for the late notice when using this this new procedure - the dog eating your diary may not be good enough!

2. **New Responsible Authorities** - Licensing Authorities and Local Health Boards are to become Responsible Authorities, allowing them to make representations and initiate Reviews.

3. **Vicinity Test** - The removal of the vicinity requirement for Interested Parties, meaning persons from a much wider geographical area can make representations/objections.
4. **'Appropriate' test** - A reduction in the evidential burden on Licensing Authorities when determining an application for a Premises Licence or a Review. Licensing Authorities must now only demonstrate that their decisions are 'appropriate' for the promotion of the licensing objectives rather than 'necessary'.
5. **Suspension of a Premises Licence for non-payment of annual fees** – the Licensing Authority is required to suspend a Licence for non payment of annual fees. There is a 21 day grace period in the event of an administrative error or if the Premises Licence holder disputed liability for the fee before or at the due date. If the dispute or error is not resolved within the 21 days the Licence will be suspended. A suspended Licence is reinstated upon payment of the fee. Better find the diary that the dog ate !

Training

Our training service www.monmouthtraining.com is now fully up and running, providing (cheap) Central London training for the BIIAB, Personal Licence, Fire and Food safety and other courses on request. In times where there is increased enforcement and regulatory activity, training and due diligence should be an important part of your business.

Recent Cases

Westminster City Council ordered to repay Soho Sex Shops

R (Hemming and Others) v Westminster City Council - Administrative Court - Keith J, 16th May 2012

In a seminal judgment, Mr. Justice Keith has ordered restitution of licence fees charged to sex shops by Westminster City Council.

A judicial review of Westminster's sex licensing fees was brought by 7 owners of 13 sex shops in Soho and Covent Garden.

The essence of their claim was that while a duly authorised licensing committee had determined the annual fee for sex shops under the Local Government (Miscellaneous Provisions) Act 1982 for 2005-2006 at £29,102 per annum, it had failed to determine a fee for any year thereafter, until January 2012 when it determined that the renewal fee should be £18,737.

The claimants then claimed that the Council was precluded from making a profit from the sex licensing fee regime, and so there should be an account of the fee income and expenditure, with the claimants credited for any surplus. Although the Council contended that it was permitted to budget for a surplus, Keith J agreed with the claimants' case. The case therefore establishes the important principle that surpluses as well as deficits are to be carried forward.

In brief summary, the case established the important principles:

- (1) that where a Council profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;

- (2) that in authorisation schemes covered by the Provision of Services Regulations, enforcement costs may not be recharged to licensed operators.

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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