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‘Not All Singing and Dancing’ The Licensing and Regulatory Newsletter

Inside this Edition:-

- **Alcohol Sales (Regulation of Prices and Promotions) Bill 2008**
- **Pub Landlord pleads guilty to ten breaches of fire safety legislation.**
- **Energy Performance Certificates and Non-Residential Properties**
- **Sky TV Prosecutions rise**
- **Tips and the National Minimum Wage**
- **The Credit Crunch – Protecting your Licence**
- **Temporary Events Notices – Getting them to work for you**
- **Meet the team**



Alcohol Sales (Regulation of Prices and Promotions) Bill 2008

A Private Members Bill which seeks to regulate prices charged for units of alcoholic drinks, to regulate point of sale promotions, advertising and labelling of alcoholic drinks and to establish an industry council to administer the regulation of prices and promotions had its second reading in June on 17 October

The Bill would provide for a compulsory system of labelling obliging manufacturers to show the number of units of alcohol in each container of drink. It seeks to limit the promotion of alcohol in stores, for example by restricting sales to clearly defined and identified aisles, to apply to smaller convenience stores as well as supermarkets. Under this provision, it would also be possible to limit promotional material for alcohol, such as prominent counter displays of alcohol.

Additionally, the Bill aims to stop deep discounting of the price of alcoholic drinks by setting a minimum price for a unit of alcohol. The aim is to stop very heavy discounting and is particularly aimed at "happy hour" type promotions. Finally, in order to set this minimum unit price and the standards for promotion, the Bill would provide for the introduction of an industry-wide council, to include people from the industry as well as people with expertise from wider society.

Pub Landlord pleads guilty to ten breaches of fire safety legislation.

The Landlord of the George and Dragon pub in Swallowfield, Berkshire, owned by Punch Pubs, was convicted at Reading Magistrates' Court in June this year of ten breaches of Fire Safety legislation.

A routine fire safety inspection revealed that the Landlord, Paul Dailey, was in serious breach of Fire Safety precautions for the premises, which included:

- No fire alarm system in place
- No fire protection provided for fire escape routes
- Fire escape routes obstructed
- No fire risk assessment had been carried out for the premises
- Emergency lighting systems not working
- No fire drill training had been given to members of staff

The breaches were viewed as a life-threatening risk, not only to the staff who worked there but, crucially, to members of the public who visited the premises.

The pub was prosecuted under the Regulatory Reform (Fire Safety) Order 2005 which came into force on 1 October 2006. The Order places a duty on a 'responsible person' (usually the owner, employer or occupier of the business or industrial premises) to carry out a fire risk assessment,

providing they are competent in carrying this out.

Responsible persons under the Order are required, following a risk assessment, to implement appropriate fire safety measures to minimise the risk to life from fire. The risk assessment should be kept under regular review as risks may change.

You might think that, if you have a Fire Certificate and meet its conditions, you will be free from prosecution. In actual fact, when the Regulatory Reform (Fire Safety) Order 2005 came into place, Fire Certificates became obsolete.

The Fire Service has a duty under the current legislation to conduct inspections of business premises, in order to ensure that business are complying with legislation. Where premises are found to be in breach of legislation, Landlords may be heavily penalized. They could face a fine, which may be a fine of up to £5,000 for each offence on summary conviction (in a Magistrates Court) or an unlimited fine. They could also face up to two years imprisonment, and sometimes both a fine and a prison sentence are issued.

Energy Performance Certificates and Non-Residential Properties

With effect from 1st October an Energy Performance Certificate ('EPC') is required on

the construction, sale or letting of almost all 'non-dwellings' with an area in excess of 50 square metres, where energy is used to 'condition the indoor climate', i.e. where heating, mechanical ventilation or air conditioning are provided.

An EPC looks similar to the energy rating labels now provided on household appliances and provides an energy rating for a building from A to G, with A being the most and G the least efficient. It is accompanied by a report, which includes cost effective recommendations to improve the energy ratings of the building in question. All EPCs are stored on a national register, with a unique reference number, enabling their authenticity to be checked.

An EPC must be made available free of charge by the vendor or landlord to a prospective purchaser or tenant when non-dwellings are sold or let.

Failure to comply with this obligation could lead to a civil penalty charge amounting to, in most cases, 12.5% of the rateable value of the building, subject to a minimum fine of £500 and maximum of £5,000.

If you would like further details of the requirements to provide an EPC, please contact **Ruth Grinbergs** on **0121 212 7470** or contact our team for a full copy of our enterprise briefing entitled 'Energy Performance Certificates and Non-Residential Properties'.



Sky TV Prosecutions rise A number of prominent prosecutions for dishonest reception of a television transmission have taken place in recent months.

In the most serious case to date, Yadvinder Singh, Landlord of The Brighton Arms in Small Heath, Birmingham, forfeited his personal licence indefinitely after being found guilty of showing Sky Sports programmes without a commercial contract.

Following undercover inspections, the Federation Against Copyright Theft (FACT) caught him on three separate occasions receiving a television transmission despite having no contract with Sky.

Mr Singh not only lost his personal licence indefinitely, and thereby his livelihood, but was also banned from owning a commercial property, fined £6000 and ordered to pay costs of £809.74 plus £15 victim surcharge. And in Bristol, 4 licensees were fined a total of £20,000 for similar offences.

These cases represent the stepping up of action by FACT accompanied by a ramping up of penalties by the courts. It was only in February this year that the licensee of the Britannia in Oldham, Lancashire, was found guilty at Oldham Magistrates Court of two counts of dishonest reception of a television transmission but and fined a total of only £1000, ordered to pay £832.73 in costs and

had his personal licence suspended for just seven days.

FACT has already brought more than 900 similar prosecutions to date. More than 200 were brought during the last football season and at least a further 100 cases are currently scheduled or pending.

So don't be tempted to show Sky transmissions without the appropriate contract – it may cost you more than you think!

Tips and the National Minimum Wage

On 31 July 2008 the Government announced its plans to amend the current National Minimum Wage legislation in respect of tips, gratuities and service charges. The proposal is that tips, gratuities and service charges would no longer count as wages for the purposes of calculating whether a worker has been paid the national minimum wage ('NMW').

Current Position

At present, amounts paid by a customer as service charges, tips, gratuities and cover charges count towards NMW pay, if they are paid by the employer to the worker via the employer's payroll and the amounts are shown on the pay slips issued by the employer. However, they should not be taken into account to determine whether the employer has paid the NMW where they are given

directly to the worker by a customer or are collected by a troncmaster for example, the head waiter in a restaurant, and distributed to the workers. The 'tronc' money does however, count towards NMW pay, if it is passed to the employer, and is both paid to the worker through the employer's payroll and reflected on pay slips issued by the employer.

Proposed Changes

The Government's proposal would end the employer's practice of using tips, gratuities and service charges to 'top up' the workers' wages to meet the NMW.

The Government has also expressed its concerns over other tipping practices, in particular lack of transparency. The Government is concerned that some employers do not operate a 'fair tipping policy' and do not distribute the collected tips, gratuities and service charges to their workers. The Government will therefore be looking to encourage employers to make it clear to their customers how the tips are distributed.

A consultation on implementing the proposed changes will be launched this autumn and it is anticipated that the changes will be incorporated in the National Minimum Wage legislation sometime in 2009.

Recommendations

Employers should therefore ensure:

- If service charges, tips, gratuities and

cover charges count towards your staff's wages for the purposes of NMW pay, that they are paid to the worker via your payroll and the amounts are shown on the pay slips issued.

- You plan ahead and review your policies in respect of tips, gratuities and cover charges so that when the new regulations are introduced your business is ready to make the appropriate changes in respect of the staff's wages and clearly communicated information with regards to tips is given to the customers.

If you would like further advice or training on National Minimum Wage please do not hesitate to contact Stephen Dalling, Head of Employment.

The Credit Crunch – Protecting your Licence

These are tricky times for many in the entertainment and licensed trade. Apparently five premises a day are closing under the financial and regulatory pressures of the current market. Others will seek to weather the storm by re-financing or restructuring. But be warned, all of these courses can have serious repercussions for your licence if you're not careful.



Under the Licensing Act 2003, a premises licence lapses if the holder, whether an individual or a company, becomes insolvent. Insolvency includes entering into a voluntary arrangement, going into receivership and being adjudged bankrupt or going into liquidation. Whilst you may not always have much control over what happens, it's particularly important to bear this in mind if your refinancing or restructuring includes transferring your business to a new company and closing down the old.

The licence can be protected by an application for either a transfer or an interim authority depending on the circumstances, but action needs to be taken within 7 days of the lapse for the licence to be revived.

So, if you find yourself in this position over the next few months, or if you're one of the lucky ones who is thinking of acquiring a business from one of your more unfortunate colleagues in the trade, do make sure that the business you want to run has still got a valid premises licence. Failure to do so could cost you dear and make an already difficult situation irretrievable.

Temporary Events Notices – Getting them to work for you

As we enter the festive season, customers might be approaching you to provide events that include something that you aren't licensed for – for example – entertainment or later hours. For the one-off occasion, the answer is a

Temporary Event Notice (TEN), but do be sure you know the restrictions imposed by the Licensing Act 2003.

Probably the biggest problem facing operators is the time limit for service of TENs. The new licensing laws have failed to address the need for individual premises to gain any form of extension at short notice. Councils still stick rigidly for the 10 day rule for TENs, which in reality means advance notification of at least two weeks for any addition to the permitted hours or licensable activities for a special event. And they normally won't start the process until the original application form and the fee have been received. As the law stands, they are within their rights. No flexibility has been written into the Act, even where there is no objection from the police.

The other problem is the number of TENs that can be given. A single premises can only have twelve TENs per annum (and these can't cover a total of more than fifteen days) whilst a single operator (whether an individual or a company) can't have more than fifty per annum, however many premises they operate.

So our message to you as you get ready for Christmas is to be prepared. If you take bookings that require you to provide something outside your licence, then get organised and serve your applications in good time. And if you find that you are getting more requests from customers, then consider applying to vary your licence permanently. It may save you time

and money in the long run.

In this edition we introduce:

Neil Styles, Licensing Executive, Licensing & Regulatory Team



Neil has over 16 years experience in liquor licensing, public entertainment and betting and gaming law, working in both the public and private sectors. He has been an Licensing Executive with the firm since 2004 and previously worked at Birmingham Magistrates' Court as Senior Licensing Clerk.

An able administrator with excellent IT skills and an extensive knowledge of current and previous legislation. Currently responsible for the management of a major clients estate and acting as point of contact to ensure compliance with current licensing regulation.

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