Licensing update

Jeremy Phillips discusses the government's foray into the sale of alcohol, its efforts to untangle the 'regulated entertainment' mess and hackney carriage reforms

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In line with the coalition's agenda to row back from the liberalisation of licensing and 24-hour licences, May 2014 saw the secretary of state make The Licensing Act 2003 (Mandatory Conditions) Order 2014 (2014 No. 1252).

All premises licences authorising and or requiring certain matters, sale of alcohol, exhibition of films and security activities, will automatically be subject to a number of mandatory conditions regulating these activities.

In 2010 these mandatory conditions relating to alcohol were significantly extended to include requirements for premises to 'take all reasonable steps' to prevent 'irresponsible promotions,' enforce age verification and offer smaller measures. These conditions will generally be printed on each such licence immediately before those bespoke conditions attached by the licensing authority in line with the applicant's operating schedule, and or those imposed following a contested hearing, but will apply irrespective of whether they appear on a licence or not.

The 2014 Order, which came into force on 28 May 2014, imposed a minimum price condition on all future relevant premises and club premises licences. The condition required that the businesses affected may not sell alcohol for less than the duty chargeable plus the multiple of that duty multiplied by the VAT.

As Lord Taylor of Holbeach explained in the House of Lords: "This fulfils a commitment in the coalition agreement. It will ensure that the worst cases of cheap alcohol are banned from sale.

"The ban will prevent anyone selling alcohol at heavily discounted prices. A can – that is 440 millilitres – of average-strength lager will now cost no less than 40p, and a standard bottle of 70 centilitres of vodka no less than £8.89."

Winding up the debate he concluded: "It will stop the worst instances of deep discounting which result in alcohol being sold cheaply and harmfully. The whole point of the order is to ban the worst cases of cheap alcohol sales, but other actions that help local areas to identify and tackle alcohol-related issues are all part and parcel of the coalition's commitment to dealing with alcohol abuse."

It is clear that parliament will continue to strive for a balance as long as men and women (and the occasional child) continue to imbibe.

EMROs

Notwithstanding the government's laudable efforts to deregulate where possible, the Early Morning Alcohol Restriction Order (EMRO) represents the zeitgeist of our times when it comes to alcohol.

Building upon the efforts of former prime minister Gordon Brown, in October 2012 the coalition government introduced measures to enable local authorities to revert to early closing where local circumstances required.

The amended section 172A of the Licensing Act 2003 entitles licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between midnight and 6am, if they consider this appropriate for the promotion of the four licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance, and protection of children from harm.

A number of authorities have dabbled with the measure, thus far without result. The only two to have proceeded as far as a full hearing have been Lambeth and Blackpool. The latter witnessed a titanic battle lasting over five days.

However, at its conclusion no order was made, the authority deciding that insufficient thought had been given to the practical effects of capping alcohol sales in a tightly circumscribed area of a town defined by its tourism industry.

Deregulation of regulated entertainment

One of the nicer ironies of the Licensing Act 2003 is that while it was a consolidating measure it was also intended, in part, to represent a move towards deregulation. That simple fact makes the continuing deregulation of (some hitherto unregulated) regulated entertainment an almost Swiftian satire on the difficulties experienced by government when attempting deregulation in the modern world.

I make this point not as a criticism, sitting as I do on the department of media culture and sport advisory group. It is difficult to keep everyone happy – as the department found when consulting on its proposal to deregulate events of

up to 5,000 people, itself generating more than 1,400 responses for officers to sift through and analyse.

The Live Music Act 2012 and the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 meant that broadly, no licence would be required for the following, to the extent that they took place between 8am and 11pm:

- A performance of a play or dance in the presence of any audience of no more than 500 people.
- An indoor sporting event in the presence of any audience of no more than 1,000 people.
- Live music, where the live music comprises:
  - A performance of unamplified live music;
  - A performance of live amplified music in a workplace with an audience of no more than 200 people; or
  - A performance of live music on alcohol licensed premises which takes place in the presence of an audience of no more than 200 people, at a time when the premises are open.

The latest chapter in this saga saw a consultation in October 2013 on a proposal to use a legislative reform order to make changes to entertainment licensing. This proposed further deregulation for the activities below, conducted between 8am and 11pm:

- **Cross-activity exemptions.** The following will be exempt from entertainment licensing, with no audience limitations:
  - Entertainment activities held by, or on behalf of, local authorities, hospitals and schools, each on their own premises.
  - Entertainment activities that are part of nursery provision on non-domestic premises.
- **Live music.** A performance of live amplified music in alcohol licensed premises or in a workplace will not require specific permission where the entertainment takes place before an audience consisting of up to 500 people – the present ceiling is 200.
- **Recorded music.** Any playing of recorded music in alcohol licensed premises will not require specific permission where the entertainment takes place before an audience consisting of up to 500 people.
- **Live and recorded music exemptions.** Events will be exempt from entertainment licensing for live and recorded music where the audience consists of up to 500 people and the activities are held on local authority, hospital, school and community premises.
- **Circuses.** Tented circuses will be exempt from entertainment licensing in respect of performances of live music, the playing of recorded music, indoor sporting events and any performance of a play or dance, with no audience limitation.
- **Greco-Roman and freestyle wrestling.** These wrestling disciplines to be exempt from licensing, with no audience limitations.

My only worry is, what will we all do when everything has been deregulated?

Byzantine taxis

Believe it or not, aspects of our taxi laws can be dated back to 1636 when Charles I (concerned, like our present Mayor, about congestion in the City of London) made his proclamation restricting the number of hackney coaches to 50 and preventing them from carrying passengers for less than three miles. Eighteen years later, Oliver Cromwell authorised the establishment of the Fellowship of Master Hackney Coachmen, leading to our present day definition of hackney carriage.

For many years there have been calls for our myriad and byzantine taxi and private hire legislation to be subject to a root and branch reform.

In 2012 the Law Commission launched its initial consultation and two years later, on 23 May 2014, the commission published its impressive 280 page report and draft bill. The proposals, which will not be delivered during the lifetime of this parliament, recommend:

- The present two-tier system of taxis and private hire services should be retained.
- The creation of an offence of using a vehicle on a road to carry passengers, where both; the vehicle and the driver have been hired for that purpose, without the appropriate; licences, and the creation of a more streamlined set of general offences.
- The freeing up of cross-border working for private hire services.
- New legislation should apply throughout England and Wales, including London.
- The introduction of national standards for taxi and private hire vehicle licensing relating to drivers, vehicles and 'dispatchers' (as the draft bill calls operators).
- Procedural requirements concerning the continuing ability of licensing authorities to set additional conditions.
- Allowing local licensing authorities to continue to limit taxi numbers and enforce generally.
- Standardised procedure for statutory appeals (in line with the current London model).
- Disability awareness training for taxi and private hire drivers.

Pending proper consideration of these measures, the coalition government has advanced rather less radical changes to taxi and private hire vehicle law in the deregulation bill, which is currently making its way through parliament.

I am sure Oliver Cromwell would have wholeheartedly approved. SJ

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