

Licensing update

Jeremy Phillips discusses the plethora of alcohol-related legislation and proposals for more, managing property owners' letting of their premises and illegal gambling



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There are a number of threats, current and pending, to the licensed trade, but there are solutions to these problems. First, there is the growing pressure for a public health licensing objective which, if approved, would fundamentally alter the balance of current legislation.

Next, there is the pressing need for absentee landlords of licensed premises to make sure that their interest in any licence has been duly protected – and the implications of recent case law for certain solutions to this problem.

'Public health' objective

Suggestions that there should be a public health licensing objective are not new. Records from the beginning of the 15th century show that the more general availability of hopped beer, a stronger form of ale which came with the arrival of the Flemish weavers and their new brewing techniques, exacerbated existing problems with drunkenness. Over subsequent centuries there were repeated attempts to tackle the problem of drunkenness in a variety of ways. In Victorian times it was not unknown for members of Temperance Societies to become licensing justices as a way of pursuing their, at the time, highly contentious aims through the statutory regime (held by the courts to be legitimate, as long as they appeared to retain an 'open mind').

Indeed, I can well recall only 30 years ago the formidable chairman of the bench of licensing justices in the north opening the annual Brewster Sessions with an impassioned invective against the damage caused to public health by the immoderate consumption of alcohol.

The origins of the current legislation, the Licensing Act 2003, can be traced back to the Report of the Departmental Committee on Liquor Licensing (the so-called Erroll Report), which proposed wholesale reform of the Licensing Act 1964 (itself a consolidating measure).

While the recommendations of the report were not adopted at the time, successive governments regularly raided Erroll over the subsequent years

for reforming measures – until finally the cupboard was bare and there seemed no alternative but to proceed with wholesale reform.

The millennial proposal which preceded the Act, Time for Reform, set out three licensing objectives: to avoid the risks of 'crime and disorder, [threats to] public safety or unreasonable public nuisance'. The fourth, 'the protection of children from harm', came later. However, even at that stage a business-friendly government was mindful of the suggestion that the provision of alcohol per se could cause more general harms: in his foreword to the white paper, the then Home Secretary, Jack Straw, assured the public that the government needed to 'make sure that the system we envisage can be fully integrated into our national alcohol strategy which takes account of health as well as crime prevention initiatives'. In pursuit of this elusive goal, in 2012, public health authorities formally became responsible authorities, consulting upon every application for a new or varied licence or certificate.

To the concern of the trade, the beast has reared its head once more. On 12 June 2014 the Licensing Act 2003 (Amendment) Bill, 'A Bill to make provision for the addition of a public health objective to the Licensing Act 2003', received its first reading in the House of Lords. While the bill unsurprisingly failed to make its way onto the statute book during that parliamentary term, it is unlikely to be an isolated initiative as concerns increase on the failure of a range of licensing initiatives to control the nation's town and city centres in the early hours.

Addaction, which describes itself as the UK's leading addiction charity, is urging the three main parties to formulate policies in their manifestos for the 2015 general election that will help people not just with substance dependence, but 'harmful and hazardous drinking'. Already the all-party parliamentary group on alcohol misuse has said in its election manifesto that public health should be introduced as a fifth licensing objective. This approach has been supported by the Local Government Association (LGA), which is calling for local areas to be able to limit the opening of

late-night pubs, clubs and off-licences in areas where 'alcohol-related health problems are rife'.

Commentators, responding, have suggested that in Scotland this has proved ineffective as a means of reducing alcohol-related harms, while the principal trade body, the British Beer and Pub Association, has also identified the need for 'a period of stability in licensing legislation as we have seen constant change, with at least 13 major changes since 2005, such as the mandatory code, late night levy/early morning restriction orders (EMROs), alcohol disorder zones (ADZs), temporary event notices (TENs), and others', saying 'the last thing the public needs is yet another change in legislation.'

Registering proprietary interest

Like many licensing practitioners, I all too frequently come across hapless property owners who have let their premises for a licensed use as a pub or a club, only to find that their lessee has failed to manage the premises with the care that they expected, with the disastrous result that the licence (and core property value) has potentially been lost for ever.

The problem arises particularly where licensing authorities designate central areas in towns and cities as cumulative impact zones (CIZs), reversing the usual rule and placing the onus on applicants to establish that the grant of a licence for the chosen site will not add to the problems already identified in the area. This can be extremely difficult and mean, in practice, that the relevant licence cannot be reinstated. As I have explained in earlier articles, there are three principal methods by which such a damaging outcome can be avoided:

1. Ensure that intending lessors are given the correct advice by their property lawyers before entering into such arrangements, with the potential consequences being fully explained.
2. Ensure that the lessors avail themselves of the little-used provision afforded by section 178 of the Act, which allows for the lodging of a prescribed form and fee, so as to formally register the property interest in the premises. Once done, any material change made to the licensing register which relates to the relevant

premises at a time when the notice has effect must be notified forthwith by the licensing authority to the person who gave the notice.

The registration must be renewed annually.

3. Seek a second premises licence for the property. There may, however, be an argument in a particular case as to whether such an application is consistent with section 16(1)(a) of the 2003 Act, which sets out the categories of persons who may apply for licences. Furthermore, some authorities have been reluctant to grant second (ghost) licences, instead being prepared to treat the application, wholly artificially, as an application for additional licensed premises (see *Extreme Oyster v Guildford Borough Council* [2013] EWHC 2174 (Admin) and its sequel *R (on the application of Star Oyster Ltd and The Casino Ltd) v Guildford Borough Council* [2014] EWHC 1412 (Admin)).

Poker face

The public's love affair with gambling shows no sign of abating. The trade, overseen by the Gambling Commission, aims to ensure that gambling is conducted responsibly, with due regard for children and other vulnerable individuals, and the need to prevent crime and the risk of cheating. Unfortunately, there will always be individuals who seek to circumvent the system.

In September 2012 the wonderfully named Big Bluff Private Members Club in Palmers Green was raided by Enfield Council's licensing enforcement and trading standards teams, the Gambling Commission and the Metropolitan Police. In June of this year Ahmet Melin was found guilty at Wood Green Crown Court of five offences of money laundering and sentenced to 15 months imprisonment for each offence, to run concurrently. Because the club was operating large poker tournaments generating illegal profits those monies amounted to criminal assets under the Proceeds of Crime Act and were consequently subject to a confiscation order. The club has since stopped operating. SJ



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