

Quarterly Licensing Review

A quarterly update on the latest legal issues in the Northern Ireland Licensed Trade and Hospitality Sector

LICENSING REFORM – CHANGES ON THE CARDS?

Nelson McCausland, Minister for Social Development, has published the findings of his consultation into the reform of liquor licensing in Northern Ireland.

The purpose of the consultation was to test public opinion on proposed changes to the laws regulating the sale of alcohol in Northern Ireland including;

1. **Regulating the sale of alcohol in supermarkets and off-sales premises**
2. **Regulating the sale of alcohol in pubs and other on-sales premises**
3. **Regulating Private Members Clubs**
4. **Codes of Practice**

The consultation was considered necessary to try and address the on-going concerns around alcohol misuse and what many in the industry consider to be antiquated licensing laws. The report highlighted the effect the economic situation was having on the industry and the significant impact supermarkets were having on on-trade sales.

Some of the points to note from the findings were;

- A vast majority of respondents were against further restrictions on selling alcohol in supermarkets, including increased separation between alcoholic and non-alcoholic products and the introduction of alcohol only checkouts
- A majority found that opening hours were restrictive and were unattractive to tourists and should be brought into line with other European jurisdictions

- A significant majority wanted additional late opening hours
- Most people wanted to see liquor licences and entertainment licences aligned, including the PSNI who said it would dispel any ambiguity and confusion that currently exists
- A majority were for the removal of Children's Certificates, with children to be allowed in licensed premises until 9pm.

Reacting to the published report, the Minister has stated he is giving 'careful consideration' to the findings and has recognised that a modest increase in opening hours may be worth considering for economic reasons.



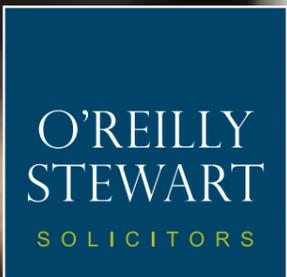
INSIDE THIS ISSUE
WORLD CUP 2014 – LAST ORDERS PLEASE
E-CIGARETTES – WHAT'S YOUR POLICY?
LICENSING OF PAVEMENT CAFÉS ACT 2014
LICENSING REFORM – CHANGES ON THE CARDS?

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WORLD CUP 2014 – LAST ORDERS PLEASE

With the World Cup getting under way in Brazil in June, licensed businesses will be looking forward to a welcome boost in customer volumes from kick off on Thursday 12th June through to the final on Sunday 13th July.

In many ways the time difference between this country and Brazil is ideal as it entails matches being played throughout the course of each evening from 5pm onwards, a timetable particularly suited to the many people who enjoy watching live football in the pub or hotel bar setting. However, with a large number of games kicking off as late as 11pm (and therefore not finishing until close to 1am) and the likelihood of crowded bars it is important that pub operators ensure that premises are adequately staffed by people well-versed in the legal restrictions in terms of opening/serving hours. In particular, licence holders who intend to open beyond 11pm on any day should check the licence to ensure that an Additional Permitted Hours Order has been marked on it by the Court.

For the avoidance of doubt the position in terms of opening/serving hours is set out below, and it should also be noted that generally speaking 30 minutes “drinking-up time” is allowed on expiry of the permitted hours.

The Basic Hours

The basic opening hours (for all licensed premises other than off-licences) are as follows:

- Monday to Saturday (other than Good Friday and Christmas Day) – 11.30am to 11pm;
- Good Friday - 5pm to 11pm;
- Sundays and Christmas Day – 12.30pm to 10pm.

The Additional Hours

In addition to the hours set out above, if the relevant Licence has the benefit of the maximum hours available under an Additional Hours Order, it may broadly speaking be entitled to open during the following times:

- Monday to Saturday (other than Christmas Day, Good Friday, and Easter Saturday) – 11pm to 1am; and
- Sundays (other than Christmas day, Easter Sunday) – 10pm to 12midnight;

Effectively this means that where there is an 11pm kick off, alcohol sales will have to cease virtually immediately after the final whistle, with staff then beginning their normal clearing out procedures. Provided that a careful eye is kept on the clock any issues with the PSNI should be avoidable and a successful World Cup Summer should result.



E-CIGARETTES – WHAT’S YOUR POLICY?

With a reported 1.3 million people now using e-cigarettes in the UK, licensed premises are now having to decide how to deal with their use indoors and whether or not to ban them alongside normal cigarettes.

The facts

At present, e-cigarettes are completely legal in the UK although the Welsh Assembly has recently proposed a ban in enclosed spaces while draft legislation is currently making its way through the EU in relation to restricting their use and bringing them into line with medicinal legislation. They have been banned in countries such as Brazil, Mexico and Singapore and are restricted to varying degrees in several US states.

The devices are battery operated and contain a liquid mixture of propylene and glycerine in which the nicotine is found. They emit a vapour, not smoke and are odourless.

The practicalities

To the human eye the vapour looks like smoke and bar staff may find it difficult to distinguish e-cigarettes from real cigarettes, especially since some e-cigarettes are made to look like the real thing. This could result in staff policing the premises instead of carrying out their main functions. It could lead to complaints from customers who may think their fellow customer is smoking a cigarette or that the bar or restaurant is breaking the law. This has resulted in some bars (including the JD Wetherspoon chain) to ban the use of e-cigarettes inside their premises.

However, with no ill health effects or smell associated with the vapour, business owners should think carefully and weigh up the pros and cons before following Wetherspoon’s example and imposing a blanket ban. It may be impractical for busy staff to constantly check whether cigarettes are real or not and in such cases a blanket ban may be appropriate. However, some e-cigarettes purposely look nothing like the real thing and it would be difficult to say that they would cause staff any confusion. In such circumstances, would a ban be unreasonable? Moreover, one could argue that allowing ‘e-smoking’ may in fact support compliance with the current legal smoking requirements and would actually help keep smokers indoors where they will in turn purchase more food or drink.

With no law currently dealing with e-cigarettes, it is up to each premises to decide their own policy in relation to the use of e-cigarettes by both customers and staff.

LICENSING OF PAVEMENT CAFÉS ACT 2014

The Licensing of Pavement Cafés Act 2014 has slowly made its way through Stormont and finally received Royal Assent on 12th May. It is now set to have a significant impact on both licensed and non-licensed traders.

In recent years, Northern Ireland has seen a marked increase in the practice of cafés, bars and restaurants following our European neighbours and placing furniture outdoors to enable customers to enjoy their food or drink outside. This was none more so evident than during last year’s ‘unseasonably’ warm summer. The development of this ‘cafe culture’ has until now been unregulated with the Roads Service operating a ‘toleration policy’ towards existing pavement cafés as long as they do not compromise public safety or hinder the movement of pedestrians. A more permanent solution is clearly necessary and a new statutory framework will make provision for the regulation by district councils of the placing in public areas of furniture for use for the consumption of food or drink.

The key aspects of the licensing scheme will see traders applying to their district council for a licence; the council will consider the application, having consulted with Roads Service, and will grant the licence, unless any of the grounds for refusal, which are specified in the Bill, apply. Councils will be able to impose a range of licence conditions and may vary, suspend or revoke the licence in certain circumstances. Appeals against any council decisions can be made to the Magistrate’s Court. At their discretion, councils may charge a licence fee to cover the costs of administering the scheme, although some traders have expressed concern that any fee may actually put owners off operating pavement cafés instead of encouraging trade. Traders who operate a pavement café without a licence will be liable to a fine of up to £1000 and councils will be able to remove facilities at any café running without one.

The Act will be subject to existing licensing laws and Traders will be required to insure areas where their furniture is placed. Licensed traders will not be permitted to serve alcohol in the ‘Pavement Café’ area where Councils consider it could result in disorder. Careful consideration will also have to be given to the issue of smoking; any pavement café is not subject to our smoking laws and so operators should consider creating non-smoking zones.

It is hoped that the new law will aid the hospitality industry by helping create vibrant, al fresco dining areas which will attract locals and tourists alike, improve the image of our town centres and increase trade.

As stated above the Act received Royal Assent on 12th May 2014 and is now set to be implemented on a timetable to be announced shortly by the Department for Social Development. Watch this space.