



POLICE WORLD CUP CRACKDOWN

It's just over two months until World Cup 2010 in South Africa. Large sporting events such as this present massive opportunities for pubs and bars.

What better way to watch the beautiful game than in your local with a few friends? (Well arguably a combined trip to Table Mountain and Soccer City in Johannesburg – but if that's off the cards, we'll settle for our local).

Many pubs and bars rise to these great sporting occasions by putting up big screens and welcoming in fans with bunting, flags, and special offers.

Unfortunately, the enforcement authorities are also making their plans, and from what has been identified so far, it does not make pretty reading for the trade.

The Publican reports on police plans to make all licensed premises that intend to screen live matches in Basingstoke, Hampshire to use door security and polycarbonate glasses. Such enforcement will end up costing landlords good money and may put customers off.

Bill Sharp, of the Guild of Master Victuallers, is reported as saying the plan was tantamount to "using a sledgehammer to crack a nut" and it's hard to disagree with him.

After all, many pubs manage to screen Premier League and other domestic matches without problems, and in many cases, there is more potential for trouble during these because of the presence of rival fans. This is much less likely in the context of the World Cup.

In any event, this blanket approach of making each and every venue comply with stringent conditions must be wrong (although you could argue the police are simply following the misguided approach of the Government and their mandatory code). The World Cup should be an occasion for people to enjoy football in a pub. Stringent conditions concerning security and potential disorder should be applied only to specific premises where this might be a problem.

In fairness, Hampshire Police have responded by insisting their plans are suggestions only and that pubs were not being forced to comply with the advice.

In truth, the Police do not have the powers to impose such conditions on pubs and bars under the licensing legislation, unless the premises are subject to a review of its Premises Licence, or unless the Premises Licence Holder has agreed to incorporate them into its licence through a variation.

However, I would suggest that those premises which do not comply with the suggestions are likely

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POLICE WORLD CUP CRACKDOWN

to be more closely scrutinised by the enforcement authorities than those that do. And if you think that's cynical, then their spokesman is reported as saying: "If there is any disorder we would look at reviewing the licence if they did not comply but it is not a condition to showing the games".

And if that's not enough, South West Business reports that police in Plymouth have raised the spectre of racism during the World Cup. Inspector Gary Neeves apparently told a meeting of the local Clubwatch this month that: "The event could be hijacked by the more right-wing elements that may use this sort of event". Quite what evidence is available for this, the report does not say.



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Whatever your postcode, be prepared, the 2010 World Cup is fast-approaching and the authorities are on high alert. Hopefully, if you have a good relationship with them, issues can be addressed in a sensible manner and blanket conditions can be avoided.

If you haven't already done so, now is a good time to review your licenses for currency and accuracy. Don't forget to prepare ahead for extended hours. Applications for Temporary Events Notices take ten working days from the day after they are received by the local authority. I have a good feeling about this World Cup. Publicans, we need your big screens to see England go all the way.

7 DAYS TO MANDATORY CONDITIONS



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A ban on irresponsible drinks promotions and "dentist's chairs" and a requirement that on-licensed premises have free tap water available to customers will shortly come into effect.

The Government announced in January that a new mandatory alcohol retailing code would be added to all relevant Premises Licences over the coming months in yet another effort to "ensure consistent good practice and crack down on problem premises".

Examples of irresponsible drinks promotions which will be banned include "all you can drink for £10", women drink free deals and speed drinking competitions. Dentist's chairs – where drink is poured directly into the mouths of customers – will also be banned.

These bans, along with the requirement to offer free tap water will come into force from 6 April 2010, just weeks before the General Election.

The code will also require premises to:

- ◆ Have an age verification policy in place to check the ID of anyone who appears to be under the age of 18.
- ◆ Make available small measures of beers, wines and spirits so that customers have a choice between a single or double measure of spirits and a large or small glass of wine.

7 DAYS TO MANDATORY CONDITIONS

These two conditions will come into force on 1 October 2010.

All of the new conditions will apply to existing as well as new on-licensed Premises Licences.

The new mandatory conditions are not without controversy. We have already had enquiries about whether current practices in licensed premises might fall foul of them. The conditions relating to “irresponsible promotions” are particularly tricky. The conditions seek to ban games or activities which encourage customers to drink a quantity of alcohol within a time limit or drink as much alcohol as possible. It is not clear if this is an outright ban or whether such activities are only banned if, in the words of the regulations, they are carried out: “In a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children”.

Unfortunately, although we are only one week away from the first stage of implementation of these new conditions, the Home Office has not yet issued its Guidance, which although not conclusive, would at least assist the licensed trade and enforcement agencies, in seeing where the Government’s interpretation lies.

In the end, final interpretation will lie with the High Court.

Any person or premises which breaches any of the above conditions could face a fine of up to £20,000 and/or up to six months in prison. They may also face a review of the premises licence which could lead to even tougher conditions or revocation.

In addition, the Government has given local councillors the power to initiate licence reviews without having to wait for a Responsible Authority or local resident to do so.

Will these new initiatives have the desired effect of reducing alcohol-related crime and disorder? We remain unconvinced. In our view, Responsible Authorities and local residents already have the necessary tools to do this. For premises who appear to be causing problems, the review process is a Sword of Damocles, almost permanently dangling over them. Enforcing bodies and local residents should be encouraged to use these powers effectively.

In our opinion, the biggest problem – the behaviour of individual customers – is in no way tackled by these new powers. It appears to be routine to send individuals away with nothing more than a stern telling off, or at most, a Fixed Penalty Notice, for a range of offences under the Licensing Act 2003 and other crime and disorder legislation, whilst the apparent easier target of the retailer is pursued instead. Until individuals are made responsible for their behaviour whilst under the influence of alcohol, then these problems will persist.

We reproduce the five new mandatory conditions below:

1.—(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

Newsletter Spotlight

Responsible Authorities and local residents should use their existing powers effectively

7 DAYS TO MANDATORY CONDITIONS

- (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to–
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on–
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
 3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
 - 4.—(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
 - (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
 5. The responsible person shall ensure that–
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures–
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
 - (b) customers are made aware of the availability of these measures.

A MINIMUM PRICING ISLAND?

An organisation billing itself as a “movement for social change” in the North West of England has called on Manchester City Council to consider introducing a byelaw to bring in minimum pricing.

According to a report in *The Publican*, Our Life, a membership organisation, sees a landmark byelaw as the “strongest legal approach” for getting a minimum price for alcohol into the city’s pubs and supermarkets.

The Local Government Act 1972 gives local authorities powers to make byelaws for the prevention and suppression of nuisances in their area.

A MINIMUM PRICING ISLAND?

Furthermore, the Local Government Act 2000 allows local councils to do anything within their powers to promote or improve the economic, social or environmental well-being, of their area.

Andy Walker, head of corporate affairs at Our Life, is reported as saying the byelaw proposal was currently “just an idea up for discussion” but added: “For a lot of councils and health bodies around the region the bill for alcohol problems is becoming unaffordable. The supermarkets are very much part of this and it’s something that needs to be addressed”.

On the face of it, the procedure for enacting a local byelaw is quite straightforward. Notice of the intention to make the byelaw must be given and advertised in specified ways at least one month before it could come into effect and must be made under the seal of the local authority.

However, before a byelaw can come into effect it must be confirmed by the “confirming authority” which at the moment, is the Secretary of State for Communities and Local Government. Given the current Government’s reluctance to act on minimum pricing, it appears to us highly unlikely the Secretary of State would confirm such a byelaw.

Furthermore, the power granted under the 2000 Act “does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment”.

As Lee Le Clercq, regional secretary for the British Beer & Pub Association North, said in The Publican article: “I cannot begin to imagine how UK competition laws would allow such an anti-competitive byelaw no matter how well intentioned it might be”.

Whilst the idea of Manchester becoming an island of minimum pricing might be a worthy way of Our Life keeping the idea of minimum pricing on the agenda, it seems to us it is highly unlikely the plan will ever come to fruition.

POKER CRACKDOWN



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A pub in the North West of England has fallen foul of a crackdown by the Police and the Gambling Commission against illegal poker games in licensed premises.

The Gambling Commission reports that three men were cautioned under the Gambling Act 2005 following a joint investigation between Cheshire Police, The Safer Halton Partnership and the Commission.

The investigation proved that poker was being played in the function room of these premises for stakes in excess of the statutory maximum allowed in pubs of £5 a head and £100 per premises per day.

Two men were cautioned for providing unlawful gaming, and another was cautioned for allowing the



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POKER CRACKDOWN

premises to be used for unlawful gambling.

Many premises operate or host legitimate poker leagues providing lawful low stakes poker and the Commission reports these cautions are the first of their kind under the 2005 Act.

Landlords considering organising or allowing poker on their premises should consider the law carefully. The Gambling Commission issued an updated guide on the law for licensed premises last year and you should read this before embarking on any gambling activities in your pub.

Newsletter Spotlight

Consider the law carefully. Read the Gambling Commission's Guidance before providing poker on your premises.

GAMBLING COMMISSION DOES SPLITS

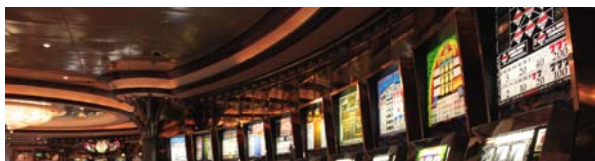


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The Gambling Commission has notified the trade of its continued tough line on operators who attempt to increase the number of gaming machines on their premises, either by splitting their premises or by applying for a licence for which they have no intention of operating the primary activity of the licence.

In a letter to a number of trade bodies, the Commission warns that since it published a supplement to its Licence Conditions and

Codes of Practice in May last year, it has made what it calls "targeted representations" against a number of premises licence applications where it has perceived operators have overstepped the mark laid down in the supplementary code.

In particular, the Commission's letter mentions "... [a] proposal to split what had been one betting premises into two betting premises and another which proposed to change the premises licence in a building which contained two adult gaming centres into a betting premises and an adult gaming centre".

The supplementary code makes it clear what factors should be evident to show that operators are providing the primary gambling activity under the premises licence and the Commission has signalled it is working with LACORS and local authorities in making representations.

In the eighteen cases it has made representations, each application has been withdrawn.

This issue is clearly not yet settled.

BOOST FOR LIVE MUSIC

On the last day of 2009, the Department of Culture, Media and Sport (DCMS) announced proposals to exempt performances of live music for 100 people or less from the requirements of the Licensing Act 2003.

The Government believes such an exemption would make it easier for both licensed and unlicensed premises to put on live music, and also assist musicians who want to play to a live audience. Currently, most live music falls within the definitions of "entertainment" and/or "entertainment facilities" in the Act and requires a Premises Licence to carry it out.

BOOST FOR LIVE MUSIC

The justification for requiring live music to be licensed is the potential impact on some events on the promotion of the licensing objectives, mainly the prevention of public nuisance, although the Government admits it believes some live music events have potential for crime and disorder and can threaten public safety. However, it believes a live music event for 100 people or less is extremely unlikely to give rise to these concerns.

The Government therefore proposes a revocable exemption for small live music events for 100 people or less. The conditions are that the performance takes place wholly inside a building; that the audience is of 100 persons or less, all accommodated inside that building and that no part of the performance takes place between 11:00pm and 8:00am. The building cannot be a temporary structure or have no roof or walls which make it an enclosed space.

An interested party (such as a local resident) or responsible authority can make representations to the Licensing Authority for an exclusion decision against particular premises to revoke the exemption for small live music events. The Authority must hold a hearing and must satisfy themselves that the exclusion is necessary to promote the licensing objectives. If an exclusion decision is made, it comes into effect immediately, and is not suspended, even if the Premises Licence Holder decides to appeal.

The consultation on these proposals ended on 26 March 2010. The DCMS proposed the Draft Order including the proposals be put before Parliament using the affirmative resolution process, meaning both Houses of Parliament must vote on it. The proposals may prove controversial (bearing in mind the current attitudes to live music events), and so it is difficult to see the proposals becoming law before the General Election.

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