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UK licensing changes could affect hotels

16 Jul 2013

Licensing reform through late-night levies and early morning restriction orders in the U.K. could potentially harm hoteliers.

Highlights

- The LNL is a financial penalty imposed on those who offer alcohol sales late at night.
- An EMRO offers local government the opportunity to introduce prohibition.
- Certain locations can be excluded after consultation.

By David Sanson
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Two new and significant reforms to licensing law in the United Kingdom have recently been introduced. Attracting a lot of media interest is the adoption of late night levies and early morning restriction orders, both of which will have a material impact on not just public houses but hotels as well.

The LNL is a financial penalty imposed on those who offer alcohol sales late at night. An EMRO offers local government the opportunity to introduce prohibition, albeit only late at night. This reform should be considered and addressed by hoteliers in England and Wales.

Framework

The U.K.'s Licensing Act 2003 underpins all premises that sell alcohol, whether pubs, bars, theaters, concert halls, sports venues or hotels. In simple terms, the Act obliges a premise's license to be obtained to legitimize the regulated activities. This covers not only alcohol but also entertainment (music, dancing, etc.) and late-night refreshment (the sale of hot food and drink between 11 p.m. and 5 a.m.). Licenses are issued by the local governmental authority for the district or city where the relevant premises are based.

Background

In May 2010, the U.K.'s coalition government gave a commitment to rebalance licensing legislation in favor of local authorities and local residents, believing that recent deregulation had gone too far. The upshot of this commitment was the [Police Reform and Social Responsibility Act 2011](#), which now permits local authorities to introduce LNLs and EMROs but only following consultation with stakeholders. The effect of LNLs and EMROs, and the subtle differences in procedures between each, requires some explanation.

Late night levy

The LNL is an annual tax imposed upon premise's license holders (the British permission required by each premise that wishes to sell alcohol, provide entertainment or provide hot food late at night) that have the benefit of such a license late at night (between midnight and 6 a.m.). It is intended to raise revenue to combat antisocial behavior, crime and disorder. But the law of (un)intended consequences means this will generally attach to every hotel in the country, irrespective of their management history or customer's conduct.



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Where alcohol sales are permitted within the relevant time period (it is for local authorities to choose the period of adoption between midnight and 6 a.m.), all hotels that are open to the public and permit the sale of alcohol for consumption on (or off) the premises will be obliged to pay the LNL. That fee will generally be between £300 (\$451.98) and £4,000 (\$6,026.40) per annum. Failure to pay on time will result in suspension of the premises license.



David Sanson

It is important to note that the LNL applies to all premises that have the "offending" permission on the face of their license, whether or not they actually use it. Even if there is only one day in every year when the license permits the activities, the whole annual fee is due.

While traditionally hotels might have presumed to be immune from the more restrictive licensing reforms, in this case they will definitely be caught if their licenses permit the public, which would appear to include guests or residents, to purchase alcohol in the effected period. Resident-only premises (for example, bed and breakfasts) or resident-only permissions (room service or mini-bars) might be exempt, but only if the local authority exercises a discretion in favor of such premises.

Action required?

A consultation exercise must be undertaken by any local authority considering such a move, so hotel operators would be well advised to engage in these local consultations. The consultations seen so far specifically ask the question whether to exempt hotels from the levy. There is a clear case to be made that a law directed at helping to finance protective measures and policing, to aid the fight against antisocial behavior, crime and disorder, shouldn't catch premises where the alcohol is ancillary to the main business as a hotel, but that will only happen if hoteliers engage in and articulate the arguments in question.

Once/if the LNL is adopted, license holders may avoid the fee by (downwardly) varying their permissions before implementation. But while a public house might be minded to lose an offending hour, on a particular night of the week, such an option may not be suitable for a hotel, with all that a 24-hour culture, and customer expectations and demands.

Early morning restriction orders

This is a new power that will enable local authorities to restrict sales of alcohol in certain parts or the whole of their local-authority area as they see fit.

It is retrospective in that it is imposed upon premises whatever their existing license permission, with authorities having the ability to elect a specific period, such as LNLs, between midnight and 6 a.m. But if introduced, it prohibits alcohol being sold to the public, in those periods.

Unsurprisingly, this is of particular concern to the late night bar and nightclub industry, potentially decimating their businesses but will equally attach to hotel premises that permit anyone other than residents to purchase and/or consume alcohol in the "public" parts of the premises.

Only residents purchasing alcohol through mini-bars or room service will be exempt. Hotel bars will have to close at the hour set by the EMRO. For those with a significant function business or those that benefit from an after-dinner or after-theater custom, this might be disastrous.

Action required?

A formal consultation must be undertaken by the local authority.

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That consultation will, unlike the LNL consultation, offer the opportunity to exclude particular premises or locations. We believe that only through a robust response from premises likely to be affected will local authorities be persuaded to abandon the proposition or moderate it appropriately.

Following the consultation in Hartlepool, England, last month, the first in all of England and Wales, the local authority's decision not to adopt (they will reconsider and re-consult in a year's time), was clearly based on the issues raised by those engaging in and resisting the consultation. One might not expect the same of Blackpool, a tourism hotspot in the U.K., which opened its consultation earlier this week.

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