

Licence holders face new responsibilities

While premises licence holders wait for the new Government's review of licensing and the 2005 reforms, they should note that the terms of their premises licence have recently been varied, even though they didn't apply for any changes.

In 2009 the Labour Government consulted on whether restrictive conditions on premises licences were needed to protect against some of the perceived weaknesses and excesses of the licensing regime. As a result, premises licence holders need to be aware that:

- since 6th April, all premises permitted to sell alcohol for consumption on the premises must provide free drinking water;

- there can be no activity to condone, encourage or glamorise anti-social behaviour;
- from October, all premises must provide smaller drinks measures and operate a proof of age scheme; and
- irresponsible drinks promotions are now illegal. "Irresponsible" is given a wide interpretation, both in the legislation and the extensive guidance. "All you can drink" promotions are obviously irresponsible. There is a risk that "happy hours" and other similar promotions lead to enforcement action being taken by local authorities. Prosecutions for illegal promotions could result in a fine of up to £20,000 or six months imprisonment.

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TLT's Licensing team has already fielded (and resisted) attempts by the police to get operators to change their core promotional activities. We recommend that licence holders carefully consider their promotional plans.

The Coalition Government has published details of a "complete review" across a range of issues. One of the reviews will be across the alcohol regime, particularly the Licensing Act. Although details are somewhat thin, the initial proposals appear to include:

- The banning of the sale of alcohol below cost price,

- reviewing alcohol taxation and pricing,
- giving Local Authorities and the Police much stronger powers to remove and/or refuse to grant premises licences to any applicant whose premises are causing problems,
- allowing Councils and the Police to permanently shut down any shop or bar found to be persistently selling alcohol to children and
- permitting Local Authorities to charge more for premises that trade "late" (to pay for additional policing).

Pension changes in 2012

The introduction of auto-enrolment from 2012 will oblige all employers to make pension contributions on behalf of eligible employees. This represents a major change for employers, who previously had to offer a stakeholder scheme (if they employed more than five people), but didn't have to make any contribution into it.

The requirement to auto-enrol is being phased in depending on the size of the employer. The largest employers (120,000 or more employees) must auto-enrol from 1 October 2012. Employers will need to consider whether they use NEST (National Employment Savings

Trust: a new government-backed scheme) or their own scheme.

Eligible employees are those earning over £5,035 per annum who are aged between 22 and 65. However, employees can opt out of the scheme.

Once auto-enrolment starts, employers will have to make a contribution into the employee's pension scheme of 1% of earnings (in the band between £5,035 and £33,540) rising to 3% by October 2017. Employees will have to make a contribution of 1% of qualifying earnings rising to 4% by October 2017. Employers will not have to auto-enrol employees who earn

more than the threshold in a specific pay period (eg over Christmas) but who will not exceed the annual threshold of £5,035.

Employers cannot offer financial inducements to opt out or ask at interview whether an employee plans to opt out. The Pensions Regulator will police this and could impose a penalty.

Employers in the leisure sector are likely to be particularly affected, as the sector relies on part-time and seasonal workers and there is a relative lack of existing pension provision. Some employers are building the prospect of auto-enrolment

into salary reviews, but there is no room for manoeuvre for those employing people on the minimum wage.

The new government recently announced that a review of auto enrolment and NEST will be completed by 30 September 2010. This could result in further changes to the existing timetable and perhaps even fundamental changes to the requirement to auto enrol.



Vetting and Barring Scheme

Launched in October 2009, and being implemented in phases, the Vetting and Barring Scheme ('VBS') is intended to prevent unsuitable persons undertaking paid or volunteer work with children or vulnerable adults. Although primarily aimed at care and similar sectors, the Scheme could have implications for some employers in the leisure sector.

VBS runs alongside, but is separate to, the Criminal Records Bureau ('CRB') and is administered by the Independent Safeguarding Authority ('ISA').

The VBS scheme is complex but will apply where an individual is works in a 'Regulated Activity' (as defined in the Safeguarding

Vulnerable Groups Act 2006) with children (i.e. under 18s) or vulnerable adults on a frequent (once a week), intensive (4 days in a month) or overnight basis. Regulated Activities relevant to the leisure sector include training, care, instruction and supervision. Importantly, activities which are open to the general public are not regulated. However, crèche facilities would normally be covered, as could leisure settings which make specific provision for children or vulnerable adults e.g. sessions, coaching or classes at leisure centres or parks for under 18s. Training or supervision in connection with a child's employment is not regulated.

Employers affected by VBS should be aware of the following requirements:

- The ISA operates lists of barred persons (a Children's List and a Vulnerable Adult's List). It is illegal for barred persons to work in regulated activities. Employers have a duty to check the lists before engaging an employee or volunteer in a regulated activity.
- From November 2010, persons wanting to work with children or young people in a regulated activity must register with the ISA. ISA-registration means that no information is known to the ISA that demonstrates that the person is a risk. It will be illegal to employ

unregistered persons to work in regulated activities.

- Individuals may register voluntarily from July 2010.
- Registration costs £64 (but there is no fee for volunteers).

The ISA monitors this information and employers will have a duty to inform the ISA if they have relevant information about an individual.

For more information about how this will operate, you may find it useful to refer to the CRB's website: www.crb.homeoffice.gov.uk

Competition law changes put land agreements under the spotlight

The Government has announced that from 6 April 2011 land agreements, like other commercial agreements, will be subject to competition law, which prohibits commercial agreements that restrict competition.

There is a transitional period of one year specifically so that businesses with a large estate (for example pubs), have time to review their existing land agreements to ensure they are not illegal. This is important because the 2011 change will be retroactive.

Clauses in land agreements that may infringe competition law include:

- covenants in a lease for commercial premises that

limit the type of commercial activity that can be undertaken

- restrictions in a lease that limit the landlord's freedom to let other premises to competitors of the tenant
- restrictions accepted by the seller of commercial property not to sell adjacent commercial premises to a competitor of the buyer
- restrictions in a lease that require the tenant to buy certain products from one supplier.

This change in the law has potentially very serious implications for the leisure industry, where land agreements frequently include restrictions along the lines of those mentioned above. A clause in an agreement that

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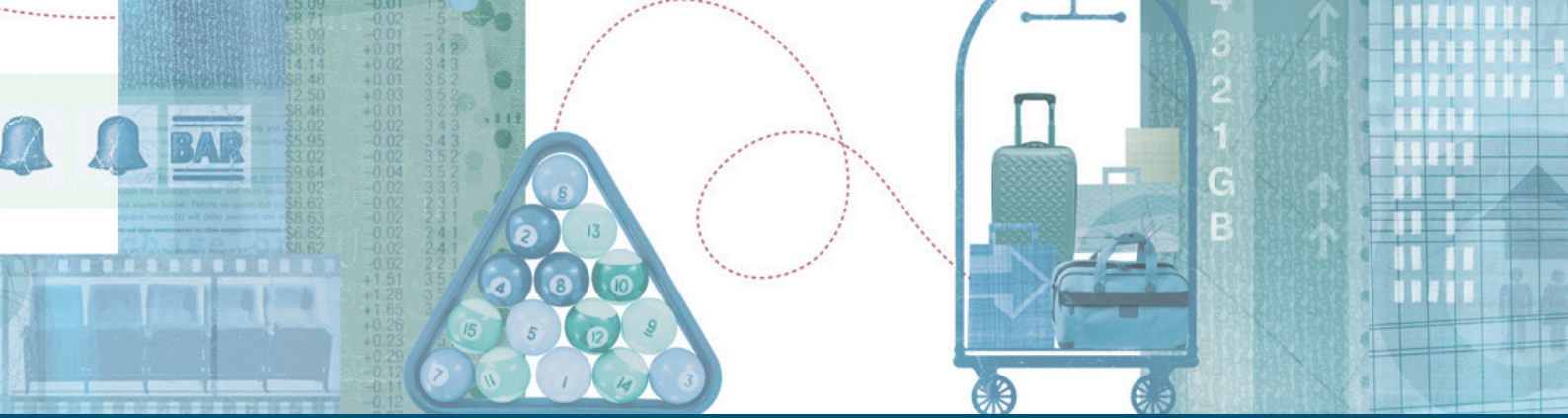
breaches competition law will be unenforceable. In certain circumstances, the whole agreement will become void.

Where a restriction in a land agreement harms competition, the Office of Fair Trading may fine the parties up to 10% of worldwide group turnover; disqualify a director (even where the director did not know about the breach of competition law) and, in the most serious cases, impose a custodial sentence

of up to five years and/or an unlimited personal fine.

Both owners and tenants of commercial property will need to take expert advice on whether restrictions included in existing (and future) land agreements infringe competition law.

Purchasers of property portfolios should revise their usual due diligence process to check for potentially unlawful restrictions in existing land agreements.



Large leisure estates face impact of Carbon Reduction Commitment scheme

New energy efficiency legislation that came into force on 1 April 2010 means that owners and operators of large leisure estates may now need to assess their total energy consumption.

The Carbon Reduction Commitment (CRC) is a compulsory emissions trading scheme. It requires affected organisations to purchase allowances to cover their annual CO₂ emissions. Organisations that used 6,000 MWh or more of electricity from half-hourly meters in 2008 must participate in the scheme.

CRC is designed to be revenue neutral for the Government and the proceeds of the allowances will be distributed back to participants by way of revenue recycling payments (RRPs). The level of RRP will be determined by an organisation's position in a league table. Those who perform well and rank at the top will be awarded a 10% bonus and those who perform badly may suffer a 10% penalty. These percentages are expected to change over time, with potential penalties of up to 50%, therefore increasing the cost of allowances.

In the case of a group company structure, the entity responsible for CRC is the highest company in the group that contracts for energy. As the scheme applies to entities not buildings, this raises complex issues as to how costs might be apportioned in a landlord and tenant relationship.

As a general rule, a landlord will be treated for CRC purposes as having used electricity, even if they supply that electricity to tenants. So a landlord of a multi-let leisure property that is responsible for the supply of energy to individual units will need to report on its tenants' energy consumption, as well as the energy used in the common parts. If the tenant pays the energy bill directly to the supplier, this will generally count towards the total energy use of the tenant.

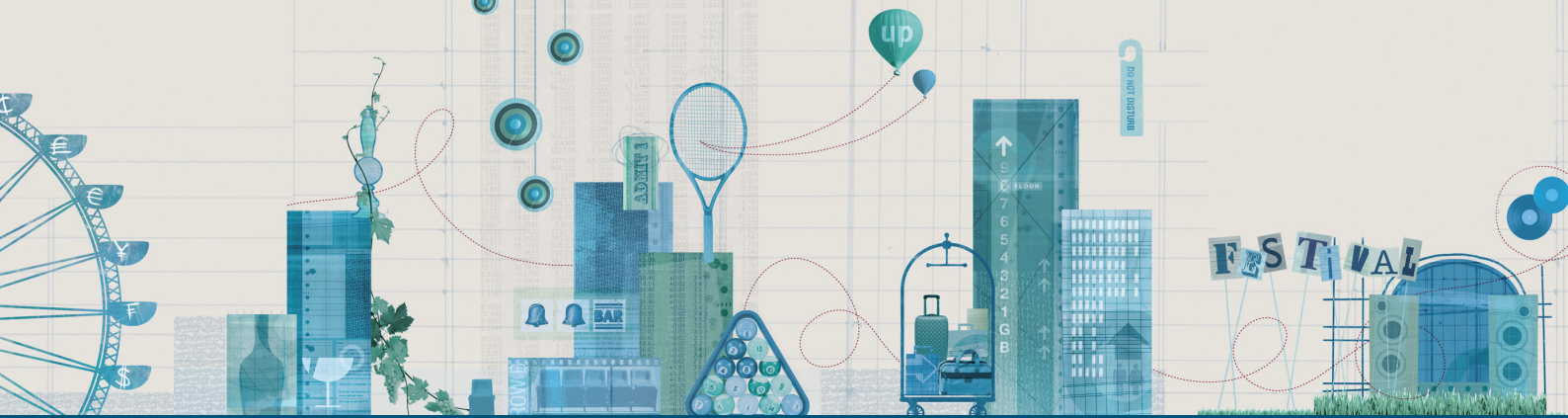
The recovery of costs associated with the scheme and the way in which RRP's are redistributed requires careful consideration in the context of leases. Landlords that are or may become CRC participants should include appropriate provisions in new leases and if possible seek greater control over their tenants' activities to maximise energy efficiency. From a tenant's perspective, the key issue is to ensure that it does not pick up costs associated with other parts of the landlord's estate or organisation.

Participating organisations need to register before 30 September 2010 to prepare for the first sale of allowances from April 2011.

Landlords and tenants affected by the scheme should consider the impact of CRC on existing leases and ensure that new leases contain appropriate CRC provisions.

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Banking on leisure

The past two years have been a roller coaster ride for the hospitality and leisure sector. We spoke to **Tim Helliwell**, head of hotels at Barclays Corporate, about current market conditions and prospects for the future.

The national hotels team at Barclays Corporate is one of the largest in the sector and has a wealth of industry expertise. Helliwell leads a team of five relationship directors in London focused solely on hotels, with another 30 plus people in the regions focusing on the broader hospitality and leisure industry, together with a London-based support team of a similar size.

"Together, the Hospitality & Leisure team covers every thing from hotels, travel and gaming, to sports, leisure and pubs and restaurants. It's largely focused on the UK, but not exclusively, particularly on the hotels side," explains Helliwell.

Notwithstanding the global downturn that has left many sectors reeling in its wake, Helliwell says that London hotel operators in particular have weathered the storm relatively well and that Barclays' lending book is

actually continuing to grow. "The London market fell by around 9%, which is a fairly hefty fall. But when you put it in the context of a predicted fall of around 25%, the performance of New York, which is down by about 30%, and Paris, down by 15-20%, it is actually pretty good," says Helliwell.

This is partially due to the falling exchange rate, he says, which worked in the UK's favour, making London more affordable to the overseas visitors that drive the market. But it was also due to a general improvement in the quality of leadership and management in the industry, not only in London but across the UK. It means that although profit levels are down markedly, the well-run businesses – whether B&Bs or premier brands – are efficient enough to cope with the reduction in profitability.

It is the better than expected relative performance of the hotel sector that reassures Helliwell that there are still plenty of opportunities in the market and plenty of well managed, growing businesses to support.

"We recognise that we are at the bottom or near the bottom of the trading cycle however lending off current performance is tricky due to a lack of clarity on future earnings. But our lending parameters haven't changed

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from two years ago and we are very keen to expand the book, while maintaining our discipline and quality," he says.

Helliwell comments that one of the biggest opportunities for the sector over the next two years is London 2012. Indeed, he believes that the strength of London's accommodation offering was a contributing factor to the successful host bid.

"There's also the Diamond Jubilee in 2012, which will bring another boost for the sector. But welcome as these events are, operators need to guard against getting distracted by them. Their business models need to be based on long term sustainability, not a temporary boost from one-off events," he says.

It is against this backdrop that Barclays are beginning to see a pick-up in market activity. After 2009 proved to be one of the quietest years for decades in terms of transactions and activity in 2010 has been relatively low-key to date, Helliwell expects things to pick up going forward.

"I sense there will be an increase in assets being offered for sale. Perhaps not large portfolio deals because banking appetite is still mixed, but the market does lend itself towards a single asset or smaller portfolio sales. The improvement in the economy will also be a motivation for putting assets on the market as trading performance improves, so we expect increasing transactional activity throughout 2010 into 2011 especially in London and other gateway cities."



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