TLT’s Licensing team provides leisure sector operators in Scotland with local expertise and presence. Additionally, TLT is unique in being the first firm able to provide a licensing service which offers genuine and significant expertise across England, Scotland and Wales.

TLT’s Leisure team is made up of over 50 lawyers. We provide clients with a full service including licensing, real estate, corporate M&A and finance, equity investment, competition, commercial services, franchising, IP, planning, dispute resolution, employment and pensions. Our clients appreciate the seamless service we can give them and our innovative approach. Our specialists help some of the sector’s leading pub companies, hotels, clubs, restaurants, visitor attractions and tour operators to stay ahead in this highly competitive industry.

Out and about: It has been another busy month for the team. We had a handful of new client openings to deal with and licensing board hearings including: Perth, Stirling, West Lothian, Falkirk, Fife, Renfrewshire, Glasgow and Aberdeen. Stephen McGowan was also out and about at various industry events including two trips to London on BII business, meeting clients at the Paisley Beer Festival, and attending the AGM of The Ben in Pitlochry where he was installed as Trustee. On top of that Stephen has been busy with organising the BII Scotland annual awards.

This month in summary

Alcohol licensing news

• Minimum unit pricing moves on
• What the doctor ordered? Yet more licensing laws…
• New EU alcohol strategy

Gambling news

• General Election results means England & Wales may have to wait on FOBT changes

Alcohol licensing news

Minimum unit pricing moves on

The European challenge on Scotland's minimum pricing law has taken the next step as the Scottish Government appeared at the European Court of Justice to present its case. A decision on the lawfulness of minimum pricing under European competition law will be forthcoming. A preliminary decision is expected later this year and the decision will then be referred back to the Scottish Court of Session. Scottish health secretary Shona Robison said: "In Scotland we drink far more than we did a generation ago, and alcohol consumption is almost a fifth higher than the rest of the UK. Heavy drinking places a heavy burden on society, not just by damaging health and causing premature death, but also by contributing to crime and disorder. Introducing a minimum unit price for alcohol is the best, most targeted way to tackle the affordability of cheap, strong alcohol consumed by heavy drinkers without penalising moderate drinkers. It will reduce the many harms caused by excessive drinking, as part of the broad range of actions we are taking. I'm confident that we have a strong case, and I'm proud that Scotland is leading the way in Europe on this important issue."
What the doctor ordered? Yet more licensing laws...

No sooner have you digested the Air Weapons and Licensing Bill Stage 1 report than we bring you news of yet more alcohol licensing laws in the form of a newly proposed private member's Bill, from Labour's Dr Richard Simpson. This Labour Bill, if passed, would become the 6th primary piece of legislation to impact on licensing law in Scotland since 2009. Given the SNP majority at Holyrood the Bill itself may struggle and some of the proposals may yet appear as amendments to the Air Weapons and Licensing Bill. The Labour Bill contains a number of proposals. Here are the key points:

**Mandatory Licence conditions concerning ‘Multipacks’**: This aspect of the Bill addresses what most observed was a glaring hole in the mandatory condition introduced under the Alcohol etc (Scotland) Act 2010 to ban discounted multipack deals. The ‘ban’ did not apply to multiples of multi-packs, only multiples of single items. In other words, if a single can of lager was for sale, then a four pack would have to be priced at 4 x the individual can; but 3 x the four pack could be sold at a discounted rate. This created an inverse incentive and was yet another example of poor drafting in the world of licensing and the amendment would be welcomed by many.

**A ban on caffeinated alcoholic products**: The Bill proposes to introduce a ban on ‘ready mixed’ caffeinated alcoholic products. The maximum level of caffeine is to be set by way of regulations. ‘Ready mixed’ is defined as a product supplied to the premises (not the customer) in a sealed container. This also appears to apply where two or more containers are packaged together and supplied to the premises and the contents are designed to be combined. Depending on the level of caffeine set by regulations, the reality of this proposal is that it seeks to bring about a ban of a well known fortified wine, at least in its current format.

**Ban on increasing age of sale to 21**: This proposal is interesting in that it comes just as the news is full of headlines about the NHS proposal to raise the age of off sales to 21. This proposal is designed to frustrate that. The Alcohol etc. (Scotland) Act 2010 created a law preventing licensing boards from adopting a blanket policy increasing the off sale age to 21 for their area. However, it is still open to a board to do so based on an individual, targeted basis such as through a licensing review hearing. Dr Simpson believes that this is a form of age discrimination and the proposal here is to stop boards from raising the age of sale to 21 regardless of the circumstances, on the basis 18 to 20 year olds are responsible adults and the product is legally available to them.

**Bottle marking schemes**: The idea here is to allow the police, and no one else, to ask a licensing board to impose a bottle marking condition on off-sales premises. The purpose of which would be to require the retailer to mark his containers so that they could be identified at some later date, for example if found in the possession of someone under age causing trouble in a public park. The procedure would mirror the s.27A imposition or variation of conditions by the licensing board’s own volition. The s.27A procedure was criticised when introduced as there was no right of appeal for the licence holder should a condition be imposed.

The policy behind such schemes is to identify whether retailers are selling alcohol to people who should not have it. If an under age person is found with a marked bottle, the idea is that this could then be used against the retailer whose mark is on the bottle as ‘evidence’. There are many difficulties with this approach. There is a causality question; and a debate to be had over the quality of evidence. Statements would have to be taken and with no one under oath or cross-examined in a licensing hearing there is room for error. There is also an issue over who is being targeted as the ‘villain’. If the alcohol has found its way to someone under age from an adult, then is there not a question as to whether blame should be apportioned to the retailer or to the adult? Proxy sales are of course illegal, and responsible small businesses should refuse sales to adults if they are concerned that the adult is going to give or re-sell the alcohol to someone under age. But unless there is a group of youths nearby or the trader has local knowledge, how is he to divine any clandestine intent? If the markings are visible, might that tarnish a trader if discarded bottles are discovered in public places, and would that be fair or proportionate?

**Increased neighbour notification for licence applications**: The proposal here is to increase the neighbour notification requirement from the current 4m up to 50m from the boundary of the premises. This would generate a significant burden on licensing board staff whose job it is to identify all these possible residences and then send letters. The number of letters would increase significantly in certain areas such as inner cities. This would inevitably generate much more objections to applications. At the same time, the Bill proposes doubling the time period for site notice display from 21 days to 42 days. At a time when the Parliament is
looking at reducing red-tape, this is most unwelcome. The delays in processing licence applications are already causing considerable difficulty in certain board areas. Doubling the site notice period will create further delay and burden in our view.

**New EU alcohol strategy**

The European Parliament has passed a resolution for a new EU Alcohol Strategy. MEPs voted in favour of a Resolution calling on the European Commission (EC) to present a new EU Alcohol Strategy to tackle health harm for 2016-2022. The renewed EU Alcohol Strategy is proposed to come into place by 2016 and run until 2022. It emphasises the importance of better labelling of alcoholic drinks, including ingredients and nutritional information with special focus on calories, and the need to raise awareness across the EU of the dangers of drinking during pregnancy and drink driving.

**Gambling news**

**General Election results means England & Wales may have to wait on FOBT changes**

During the election campaign, Labour was the only party to make a specific promise concerning the limiting or possible ban of fixed odds betting terminals (FOBTs) as part of their manifesto. Given the election result, it may now be unlikely that England & Wales will see further legislation on this front, given the Conservatives' previous reticence on the issue. Only time will tell. North of the border is a different story, of course, as the Smith Commission promises extra powers to Holyrood to restrict FOBTs. David Cameron appears to have already referred to the Scottish devolution Bill as the dust settles on the general election as an early priority so watch this space.

If you would like any more information on the information in this bulletin, or would like to seek legal advice on any form of licensing law, please feel free to get in touch.

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TLT has a Licensing team of 15 people assisting clients operating across Scotland, England and Wales. We have four people based in our Scottish offices to specifically advise in relation to licensing all over Scotland.