



# LEGAL

## Clifton Davies Consultancy Ltd

Clifton Davies Consultancy Limited specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. The views expressed by David Clifton and Suzanne Davies are given without any assumption of liability on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct. **E: [dc@cliftondavies.com](mailto:dc@cliftondavies.com) / [sd@cliftondavies.com](mailto:sd@cliftondavies.com) W: [cliftondavies.com](http://cliftondavies.com)**

## Food for thought

### David Clifton explains that compulsory calorie count labelling is on the way

In what might seem to many to be a regulatory step too far, the Department of Health & Social Care is running a 'Mandating calorie labelling in the out-of-home sector' consultation that will run until 7 December 2018.

Translating that into everyday language, it means that compulsory calorie count labelling on pub and bar menus could well be on the way, the knock-on effect of which has been described by UKHospitality as almost certainly meaning that "prices go up and investment in businesses goes down". It has added that "a blanket introduction of inflexible calorie labelling would represent a serious additional cost for businesses already facing tightening margins and economic instability", expressing concern that considerable additional regulatory burdens would be inflicted on smaller businesses and venues that change their menus frequently.

It is not just pubs and bars that would be affected. The proposed mandatory calorie labelling requirement would also extend to other hospitality venues including restaurants, cafés and takeaways, as well as online businesses that sell food or drink for takeaway or home delivery that is ready to be eaten or drunk.


There will be those who will not raise any objection. JD Wetherspoon, for example, has displayed the calorie content of its food on its menus for some time. However, it is easier for large companies with standard menus applicable in all of their venues to do this than it is for smaller venues such as individual pubs cooking food to order from menus that change regularly.

Ahead of the consultation, a similar concern led Liz Truss MP, chief secretary to the Treasury, to warn the Cabinet Office that small independent cafés and restaurants should be exempt from the calorie count labelling requirement because such a policy would be too great a burden on 26,000 such small businesses and could lead to job cuts.

However, even though the consultation asks whether micro-businesses (with fewer than 10 employees) should be excluded from the labelling requirement altogether, it may be thought unlikely that these pleas on behalf of smaller businesses will result in any change of course, given the government's aim to reduce levels of obesity across the country, including among children.

Whether calorie labelling would assist in achieving that aim is a different matter. An American study conducted in 2014 concluded that calorie labelling does not of itself have the desired effect of reducing total calories ordered at food outlets by the general public.

And against this, an earlier study suggested that, even if labelling does not lead to changes in consumer behaviour, the requirement to disclose calories could prompt food outlets to make changes, citing as an example McDonald's promotion of salad as an alternative to french fries in its value meals.

Also worthy of careful consideration is the argument that someone with an eating disorder will regard calorie information displayed on a menu as a judgment meaning that labelling could end up causing more harm than good. This is not a fanciful argument. A 2017 study published in the International Journal of Eating Disorders found that women with anorexia or bulimia may order fewer calories in response to calorie information, while those with binge eating disorders may order more calories. Food for thought indeed! 

## QUESTIONS & ANSWERS

### **Q: What is the FSA's 'Regulating Our Future' programme?**

**A:** It is a programme designed by the Food Standards Agency (FSA) to ensure the continued protection of public health and maintenance of consumer trust and confidence in food businesses in advance of Brexit occurring. As part of this programme, the FSA is due to introduce its new digital Food Business Operator registration scheme in March next year and implement a new 'segmentation' risk management framework that will determine the nature, frequency and intensity of the controls that a food business will be subject to. I suspect the display of food hygiene rating schemes will also become mandatory in England. More information can be found on the FSA's website.

### **Q: My pub in Yorkshire stays open for sales of alcohol until midnight. Do I need authorisation for late night refreshment?**

**A:** You do if you sell hot food or hot drink to customers, for consumption by them on or off your pub premises after 11pm. However, you wouldn't need late-night refreshment included as a licensed activity on your premises licence if you give it away on a genuinely free of charge basis, or, strangely enough, if you turn a regular coffee into an Irish coffee by adding some whiskey.

### **Q: Are fake TripAdvisor reviews illegal?**

**A:** An Italian Court has recently decided that writing a fake review using a fake identity constitutes a crime under Italian law and has imposed a nine-month prison sentence and a substantial fine on the person responsible. However, that does not mean that a British court would necessarily reach the same conclusion. Nevertheless, things have moved in the right direction because, having already conducted an investigation into, and taken enforcement action against, such practices in the UK, the Competition and Markets Authority announced last year that it was joining an international social media campaign to put a stop to deceptive reviews. Just in case it helps, I advised in Issue 153 of Pub & Bar how most appropriately to react to negative customer reviews on TripAdvisor.