Home Office

SELLING ALCOHOL RESPONSIBLY:

The New Mandatory Licensing Conditions

The Mandatory Code for Alcohol Retailers England and Wales

April 2010

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Introduction

Drinking alcohol plays a long-standing and generally positive role in British culture. Pubs, bars, off-licences and clubs are an important part of many people's social and family life and contribute valuable revenue to the economy.

The Government plays an important role in ensuring people can make informed choices about the amount they drink; that the police and local authorities have appropriate powers to deal with those individuals who cause trouble, and in ensuring that those who sell alcohol do so responsibly.

This document explains what the five new mandatory licensing conditions cover and the types of promotions and practices that are either prevented (such as irresponsible promotions) or expected to be implemented in all premises (such as age verification policies). These new mandatory conditions apply to all licensed premises and those with a club premises certificate in England and Wales, so this document will be of interest to those responsible for enforcing the law around licensing, as well as those selling or supply alcohol.

The purpose of these mandatory conditions is to establish a set of minimum standards in that way that alcohol is sold. It creates a level playing field for those minority of premises who have felt compelled to compete with others by running irresponsible alcohol promotions, such as "all you can drink for £10".

As such, these conditions support those premises that trade responsibly and target those who do not.

We recognise that most premises are run responsibly and that they take their licensing obligations seriously. That is why we have published a booklet to showcase the good practice that the hospitality and alcohol retail industry has put in place to prevent alcohol related crime and disorder; to drive down underage sales and to make the night time economy a more pleasant and safer place.

This booklet can be downloaded at:

http://www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/index.html

We would encourage all licensed premises to take a look at the wide range of initiatives that have been put in place up and down the country.

These good practice initiatives compliment, and are complimented by, the new mandatory licensing conditions. By making good practice the minimum standard in all licensed premises, we can make our night time economy a more welcoming and safer place for all.

How will the New Conditions Work?

Schedule 4 of the Policing and Crime Act 2009 amends the Licensing Act 2003 to give the Secretary of State the power to impose up to nine mandatory licensing conditions in relation to the supply of alcohol under licence.

These new mandatory licensing conditions apply to all existing and future premises licences which authorise the supply of alcohol, and will come into force from 6th April 2010 (with two further conditions coming into force on 1st October 2010).

These conditions override any conditions already included in a premises licence or club premises certificate, so far as they are identical to the existing conditions or inconsistent with, and more onerous than, the existing conditions. The new conditions will apply to every licence and certificate authorising the sale and supply of alcohol from the point they come into force.

As the new conditions are mandatory licensing conditions, any breaches will be treated in the same way as breaches of existing conditions. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. In most cases, we would expect there to be a review of those premises. As these new conditions are mandatory and apply across England and Wales, we would expect Licensing Authorities to take any breach seriously.

The New Conditions

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010[1] sets out the five new conditions that will apply to all licensed premises and those with a club premises certificate.

From 6th April 2010, these conditions will:

- Ban irresponsible promotions;
- Ban the dispensing of alcohol directly into the mouth; and
- Ensure that customers have access to free tap water so that they can space out their drinks and not get too intoxicated too quickly.

From 1st October 2010, these conditions will also:

- Require an age verification policy to be in place to prevent underage sales; and
- Ensure that customers have the opportunity to choose small measures of beers, ciders, spirits and wine.

Who do these conditions apply to?

If you run or are responsible for an on-trade premises, such as a pub, hotel or bar, or if you run a members club then all five conditions apply to you. If you run or are responsible for an off-trade premises, such as an off-licence or supermarket, then only the requirement on age verification (Condition 4) applies to you.

Are the examples given in this document an exhaustive list?

This document is designed to accompany the legislation and to help licensees understand the types of promotions and practices that can and cannot take place. However, it cannot take account of all the vast number of promotions that are run. For this reason, the legislation provides that "substantially similar activities" to those described are also prohibited (Condition 1(2)).

How do I know if a promotion I am thinking of running is banned?

The legislation makes clear that an irresponsible promotion is one that is "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".

If there is any doubt as to whether the promotion you are planning to run falls foul of this new mandatory condition, we strongly recommend that you discuss your proposals with your local Licensing Authority and/or police before running the promotion.

The examples given throughout this document highlight those promotions that we consider the most irresponsible and that are prohibited under the new legislation.

1. S.I. 2010/860. See Annex A of this document for the Order in full.

What the Conditions Prevent and What They Require

Condition 1. No Irresponsible Promotions

Who is responsible for ensuring this condition is adhered to?

Responsibility for this condition lies with the responsible person as defined in section 153(4) of the Licensing Act 2003[2].

The responsible person must 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.

In practice, this means that the responsible person should ensure that all staff working on the premises are made aware of this condition and that they do not organise, run or take part in any irresponsible alcohol promotions on behalf of the premises licence holder or club premises certificate holder.

What is an irresponsible promotion?

An "irresponsible promotion" is any activity or offer that encourages customers to drink in a way that could cause a significant risk of breaching one or more of the four licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

What this condition prevents:

Drinking Games

You can no longer run games or other activities that make customers drink an amount of alcohol within a time limit or drink as much alcohol as possible – i.e. any form of speed drinking game.

This would not, for example, prevent customers from choosing to drink a yard of ale, but it would prevent a licensed premises from organising a yard of ale competition.

Note - This does not stop you getting people to drink up as usual at closing time.

Large Quantities of Alcohol For Free or at a Fixed or Discounted Price

Some offers encourage specific groups to drink for free or at a discount – these groups may then become more vulnerable to crime or be more likely to cause disorder.

2. See Annex B for the section 153(4) definition of "responsible person".

This condition therefore prevents promotions such as:

- "women drink for free";
- "half price drinks for under 25s";
- discount nights for students; or
- cheap drinks for fans of a specific sporting team.

Some premises offer entry for a fixed price and then give unlimited drinks for no extra cost, or set a very high limit on the number of drinks that you can have included in that entry fee.

This condition therefore prevents promotions such as:

- "all you can drink for £10";
- "pay £5 entry and then drink up to 12 shots";
- "10 pints for £10"; or
- "pay your entry fee then drink for free until 10pm".

Note - This does not ban promotions that are available to customers whilst they are having a table meal, as defined under section 159 of the Licensing Act 2003[3].

Prizes and Rewards

You will no longer be allowed to run promotions that make a customer drink a certain amount of alcohol in order to get a prize or reward (including free alcohol) inside a time limit of less than 24 hours.

This means that promotions like "drink 4 pints get the 5th for free" or "drink 5 bottles of cider and win a free gift" cannot be run anymore.

Note: This would not prevent a landlord buying a round of drinks for a winning darts team, for example.

Sporting Events

You will no longer be allowed to run promotions based on things happening during a sporting event being watched on your premises, such as:

- "half price drinks when England scores a goal"; or
- "free drinks if your team wins".

Posters and Flyers

You cannot use materials or signs on or near to your premises to advertise promotions there if they condone, encourage or glamorise anti-social behaviour or refer to getting drunk in any positive way.

3. "Table meal" means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table.

Condition 2. No Alcohol Dispensed Directly into the Mouth

This condition means that you cannot run activities that involve alcohol being poured directly into the mouth of a customer. You must not allow other companies or individuals to do this on the premises either.

Sometimes customers organise their own activities, e.g. the "dentist's chair", pouring alcohol into each other's mouths – you must also make sure that this does not happen on your premises.

Note: This does not include where that other person is not able to drink without assistance because of a disability (as defined under section 1 of the Disability Discrimination Act 1995).

Condition 3. Free Tap Water for Customers

Many premises already offer free tap water. This condition means that all premises have to give customers tap water for free if they ask for it. This helps people to space out their drinks and not become intoxicated quickly, which reduces the risk of crime and disorder occurring.

The tap water you provide should be suitable for drinking and must be provided where reasonably available.

What is meant by "reasonably available" is a question of fact; for example, it would not be reasonable to expect free tap water to be available in premises for which the water supply had temporarily been lost because of a broken mains supply.

Condition 4. Use an Age Verification Policy

Underage alcohol sales put young people at risk of harm and you risk losing your licence, facing a potential fine or imprisonment. It is in everyone's interest to have a robust age verification policy in place to protect your business and to protect children.

Under the new condition, the premises licence holder or club premises certificate holder must make sure that the premises has an age verification policy in place for the sale or supply of alcohol.

This policy must make sure that customers who appear to staff to be under 18 years of age (or any older age specified in your own policy or in schemes such as Challenge 21 and 25) are asked to show ID with:

- Their photograph;
- Their date of birth; and
- A holographic mark.

This must be done before they are served alcohol, to prove that they are old enough to buy it.

This condition is intended to ensure that all licensed premises operate at a minimum standard of due diligence to ensure they do not sell alcohol to minors. Premises that are already operating age verification policies (such as: No ID No Sale, Challenge 21, Challenge 25 or Challenge 30) do not have to take any additional action to comply with the condition.

However, for practical reasons, paragraph (2) of this condition, which deals with the specific terms of the age verification policy, only applies in situations where the sale takes place face to face. Companies that sell alcohol remotely (distance sellers) for example, online or by mail order, should also operate an age verification policy. But as the transaction takes place remotely, the condition does not mean that photo ID needs to be shown at the point of delivery if age verification has taken place already via another means. Under Section 151(6) of the Licensing Act 2003, alcohol can be delivered to an under 18 as long as the delivery is made to the home or office address of an adult who made the order.

What are the acceptable forms of ID for age verification purposes?

Acceptable forms of identification for the age verification conditions are:

- Passport;
- Photocard Driver's Licence;
- Cards issued by local schemes that have been verified through the Proof of Age Standards Scheme (PASS) and bear the official PASS hologram ; and
- National Identity Card.

Example Policies

The Home Office will make example policies available for licensed premises to use or adapt before October 2010.

These will be available at:
www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/index.html

More information about Challenge 21 / 25 schemes is available at:
www.beerandpub.com/industryArticle.aspx?articleId=85

www.wsta.co.uk/Challenge-25.html

Condition 5. Give Customers the Choice of Small Measures

Many premises already make smaller measures available, but if yours does not, you now have to make sure that you make the following measures available for customers to buy:

- Beer and cider: **half a pint**
- Gin, rum, vodka and whisky: **25 ml or 35 ml** (depending on the measure you normally serve)
- Still wine in a glass: **125 ml**

Customers must also be made aware of these measures by, for example, listing them on drinks menus, or being informed by staff when ordering their drinks.

Note: This does not prevent you from serving larger sizes, such as 250ml wine, pints or doubles, although all measures offered must comply with relevant Weights and Measures legislation.

Note: This does not stop you selling "ready to drink" pre-packaged alcoholic drinks. It does not mean that you need new glassware as you can choose to use an approved measure.

flares

Frequently Asked Questions

Q. Does this ban "Happy Hours" or "Pub Crawls"?

A. This condition will not ban promotions that are run in a manner consistent with responsible drinking such as the majority of standard alcohol retail practices. We are not banning happy hours, pub-crawls or general discounting of alcohol per se. These activities will only fall foul of this condition if they are promoted and organised in an irresponsible way.

Q. How do I know if a promotion I plan to run will be captured by these new conditions?

Where there is any doubt about whether a specific promotion falls foul of these new conditions, we expect that licensed premises will discuss them with the police, trading standards or the Licensing Authority beforehand.

Q. What standard should the tap water be?

A. Requirements on water suppliers are set out in regulations under the Water Industry Act 1991. The Water Supply (Water Quality) Regulations 2000[4] sets the minimum standards for water supplied through the consumer's tap.

Q. Does this bring an end to Challenge 21?

A. This does not bring an end to Challenge 21 or other similar schemes. Any business choosing to operate a scheme that builds in the due diligence of asking those who may appear to be under 21, but could still potentially be under the legal age of 18, would not be punished for not asking to see the ID of a 20 year old for example. We have been clear that local areas should not seek to punish businesses in an instance where they have not actually made an underage sale.

We fully support Challenge 21 and Challenge 25 and in order to allow these schemes to continue unchanged, we have made an explicit mention of this in the condition - by allowing an older age to be specified in the age verification policy, although the law in relation to the legal age for purchasing alcohol has not changed.

Q. Does this affect online sales?

A. Currently, many deliveries are made by courier companies and there is no legal duty for them to age verify at the door. It is legal to deliver alcohol to an under 18 as long as the order is placed by an adult and the delivery is made to that adult's home or office address (as provided by section 151(6) of the Licensing Act). The new mandatory age verification condition does not alter that position.

Any "distance sellers" that already have a duty to carry out age verification, will have to continue to do so under the new condition. The same holds for any delivery personnel that currently, in practice, carry out age verification by virtue of section 190 of the Licensing Act 2003.

If the distance seller or delivery agent (e.g. the Post Office or a courier company) does not currently have any duty to check for age (either because it is not licensed or because section 190 does not apply) then the new condition has no effect on them.

4. "Table meal" means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table.

Q. What about biometric age verification schemes?

A. There are very few existing age verification schemes that use biometric data (such as fingerprints) to verify age. For those biometric schemes that do exist we would expect them to use an accepted form of ID, meeting the criteria set out in the condition, before cards for the scheme are issued, thus enabling them to be included in the required age verification policy.

Q. Do I need to buy new glassware?

A. Pubs are not required to buy new glasses as a result of this condition. There is a choice of using measured optics or a Government stamped measure instead.

Q. Can I still serve large measures of wine or doubles?

A. Yes. Businesses are still free to offer 175ml and 250ml of wine or double measures of spirits as set out in Weights and Measures legislation. This condition requires them to ensure that the 125ml measure of wine and a single measure of spirits are available to customers.

Q. What will happen if I do not comply with these conditions?

A. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. However, in many cases, the licensing authority or police are likely to call for a review of those premises as the initial response.

As these new conditions are mandatory and apply across England and Wales, we would expect licensing authorities to take any breach seriously.

Annex A: The Order in Full

This Order can be downloaded from
www.opsi.gov.uk/si/si2010/pdf/uksi_20100860_en.pdf

LICENCES AND LICENSING

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

Coming into force

Paragraphs 4 and 5 of the Schedule	1st October 2010
Remainder	6th April 2010

The Secretary of State makes the following Order in exercise of the powers conferred by sections 19A, 73B and 197(2) of the Licensing Act 2003[5].

In accordance with section 197(4) of that Act[6], a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with sections 19A(1) and 73B(1) of that Act, the Secretary of State considers it appropriate for the promotion of the licensing objectives[7] to specify the conditions set out in this Order.

Citation and commencement

1.—(1) This Order may be cited as the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010. (2) This Order shall come into force on 6th April 2010 other than paragraphs 4 and 5 of the Schedule which shall come into force on 1st October 2010.

Interpretation

2. In this Order—

"the Act" means the Licensing Act 2003;

"anti-social behaviour" has the meaning given in section 36 of the Anti-social Behaviour Act 2003[8];

"disability" has the meaning given in section 1 of the Disability Discrimination Act 1995[9];

"relevant premises" has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

"responsible person" has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act.

5. 2003 c.17; sections 19A and 73B were inserted by paragraphs 2 and 4 respectively of Schedule 4 to the Policing and Crime Act 2009 (c.26).
6. Section 197(4) was amended by paragraph 44 of Schedule 7 to the Policing and Crime Act 2009
7. See section 4(2) of the Licensing Act 2003.
8. c.38
9. c.50

Mandatory conditions

3.—(1) Subject to paragraph (3), in relation to an existing or future relevant premises licence, the conditions set out in the Schedule are specified for the purposes of section 19(4)[10] of the Act (mandatory conditions where licence authorises supply of alcohol).

(2) Subject to paragraph (3), in relation to an existing or future relevant club premises certificate, the conditions set out in the Schedule are specified for the purposes of section 73A[11] of the Act (mandatory conditions relating to the supply of alcohol to members or guests).

(3) The conditions in paragraphs 1 to 3 and 5 of the Schedule do not apply where the licence or certificate authorises the sale by retail or supply of alcohol only for consumption off the premises.

SCHEDULE Article 3

Mandatory Licensing Conditions

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–

(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.

10. Section 19(4) was inserted by paragraph 1 of Schedule 4 to the Policing and Crime Act 2009.
11. Section 73A was inserted by paragraph 3 of Schedule 4 to the Policing and Crime Act 2009.

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: 1⁄2 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.

Annex B: Definition of Responsible Person

In section 153(4) of the Licensing Act 2003, "responsible person" means:

(a) In relation to licensed premises:

(i) the holder of a premises licence in respect of the premises;

(ii) the designated premises supervisor (if any) under such a licence; or

(iii) any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor.

(b) In relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question.

Note: (c) refers to permitted temporary activities and is not relevant for these purposes.