

**To:** Licensing and Gambling Acts Committee

**Date:** 14 June 2010 **Item No:**

**Report of:** Head of Environmental Development

**Title of Report:** Imposition of New Mandatory Conditions In Respect of Certain Premises Licensed Under The Licensing Act 2003.

### **Summary and Recommendations**

**Purpose of report:** To update Members regarding the imposition of new Mandatory Conditions, via the Policing and Crime Act 2009, on certain premises licensed under the Licensing Act 2003.

**Report Approved by:**

**Finance:** Gillian Chandler

**Legal:** Daniel Smith

**Policy Framework:** Statement of Licensing Policy

**Recommendation(s):**

**The Committee is recommended to note the contents of the report.**

## **1. INTRODUCTION**

- 1.1 The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 has introduced 5 new conditions that will apply to licensed premises and those with a club premises certificate.
- 1.2 From the 6th April 2010 the additional conditions will ban irresponsible promotions, ban the dispensing of alcohol directly into the mouth and ensure that customers have access to free tap water. From the 1st October 2010 conditions will also apply which 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.
- 1.3 It should be noted that Conditions 1,2,3 and 5 do not apply where the licence or certificate authorises the sale by retail or supply of alcohol only for consumption off the premises.

1.4 Details of the new Mandatory Conditions are attached as Appendix 1.

## **2. BACKGROUND**

2.1 Members will recall, from previous reports submitted to them, that the Policing and Crime Act 2009 confers a power on the Secretary of State to specify further mandatory licensing conditions relating to the sale by retail or supply of alcohol in premises licences and club premises certificates.

2.2 Schedule 4 to the Policing and Crime Act 2009 amended the Licensing Act 2003 and created an enabling power that allows the Secretary of State to set out (in secondary legislation) mandatory licence conditions relating to the supply of alcohol for all new and existing relevant premises licences and for all new and existing relevant club premises certificates respectively (or for those premises licences or club premises certificates of a particular description). "Relevant" here refers to the licence being for supply or retail of alcohol.

2.3 Paragraph 1 of Schedule 4 to the Policing and Crime Act 2009 amends Section 19 of the Licensing Act 2003 so that where premises are licensed for the sale of alcohol, that licence will be subject to the mandatory conditions specified in any order made by the Secretary of State.

2.4 Each mandatory condition will take precedence over any existing licensing conditions to the extent that the mandatory conditions are identical or inconsistent and more onerous. For example, if a Premises Licence has a "Challenge 21 or 25" condition then the mandatory requirement to provide proof of age for persons that appear to be under 18 will not be applied and the "Challenge 21 or 25" condition will remain.

2.5. Statutory Instrument No. 860 / 2010 ("The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010") represents the first use of the powers inserted into the Licensing Act 2003 by the Policing and Crime Act 2009 and was approved in Parliament on 15th March 2010.

2.6 The Schedule to this Statutory Instrument sets out five mandatory conditions which apply to relevant premises licences and club premises certificates from the date of coming into force of the respective parts of the Order. Those conditions are attached within Appendix 1 to this Report.

2.7 Conditions 1-3 and 5 do not apply to those premises which permit the supply of alcohol only for consumption off the premises. However condition 4, requiring an age verification policy to be adopted, will apply in addition to licences and certificates which permit the supply of alcohol only for consumption off the premises.

2.8 Conditions 1-3 will come into force on 6th April 2010, whilst 4 and 5 will take effect from 1st October 2010.

### **3. ADMINISTERING THE NEW CONDITIONS**

3.1 Guidance issued under Section 182 of the Licensing Act 2003 (attached as Appendix 2) states that the new Mandatory Conditions are treated as if they are included in existing licences and certificates on the date that they come into force.

3.2 The Licensing Team will issue these new Mandatory Conditions to all relevant licensed premises within this Authority, for the licensee to insert as an additional page to Annex A of the Premises Licence. The number of relevant licensed premises in Oxford is:

Premises with on-sales	431
Premises with off-sales	128
Club Premises	35

3.3 Any subsequent amendments applied for by relevant licence holders will be carried out as normal by officers, and the Premises Licence / Club Premises Certificate amended to show the new Mandatory Conditions correctly on Annex A of the Premises Licence / Club Premises Certificate.

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**Background papers:**  
**Version: 1.0**

## THE NEW MANDATORY CONDITIONS

## APPENDIX 1

### Condition 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.

### Condition 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).

### **Condition 3**

The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

### **Condition 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.

### **Condition 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: ½ 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.

**EXTRACT FROM GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003 – ISSUED 30<sup>TH</sup> MARCH 2010.**

**Transitional Arrangements for the new mandatory conditions**

- 10.53 The new mandatory conditions introduced in section 19A of the 2003 Act (governing e.g. irresponsible promotions), unlike the existing mandatory conditions (e.g. the requirement for a Designated Premises Supervisor under section 19 of the 2003 Act), do not have to be physically included in the licence or certificate but nonetheless will apply to every licence and certificate authorising the sale and supply of alcohol for consumption on the premises. However, like the existing mandatory conditions, the new mandatory conditions do not apply to activities (including the supply of alcohol) authorised by a temporary event notice.
- 10.54 Whereas the existing mandatory conditions are set out in Annex A of the licence or certificate, the new mandatory conditions are treated as if they are included in existing licences and certificates on the date that they come into force. The new mandatory conditions prohibiting irresponsible promotions and alcohol from being dispensed directly by one person into the mouth of another, and the condition requiring tap water to be available, come into force on 6 April 2010. The new mandatory conditions imposing an age verification requirement and a requirement to make small alcohol measures available come into force on 1 October 2010.
- 10.55 The new mandatory conditions override any pre-existing conditions already included in a licence or certificate insofar as the new mandatory conditions are identical to, or inconsistent with and more onerous than, any pre-existing conditions. The new mandatory conditions take effect on this basis in relation to existing licences and certificates on the date that the new mandatory conditions come into force, and the impact this will have on preexisting conditions written into existing licences and certificates will not be recorded on the face of those documents. Local Authorities may like to make licence and certificate holders aware that the new conditions apply, to enable them to check that they thereafter operate in accordance with any changes which have been made to their conditions. Licensing Authorities may also wish to make license holders aware of Home Office Guidance on the new mandatory conditions.

**Irresponsible promotions**

- 10.56 Under this condition, the “responsible person” (defined in the 2003 Act as the holder of a premises licence, designated premises supervisor, a person aged 18 or over who is authorised to allow the sale or supply of alcohol by an under 18 or a member or officer of a club present on the club premises who can oversee the supply of alcohol) should be able to demonstrate that they have taken all reasonable steps to ensure that

staff do not carry out, arrange or participate in any irresponsible promotions. An irresponsible promotion is one which encourages the sale or supply of alcohol for consumption on the premises and carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children. The aim of the condition is to prohibit or restrict promotions which encourage people to drink more than they might ordinarily do and in a manner which does not promote the licensing objectives.

10.57 Irresponsible promotions take a number of forms. The following activities are set out under the 2003 Act and cover the specific activities described below or those that are substantially similar.

### **Drinking Games**

10.58 Drinking games are those which may require or encourage individuals to drink a quantity of alcohol within a time limit, or drink as much alcohol as possible within a time limit or otherwise. For example, this may include organised 'drink downing' competitions if these carry a significant risk to any of the four licensing objectives. This would not prevent the responsible person (see paragraph 10.56) from requiring all drinks to be consumed or abandoned at, or before, the closing time of the premises. Nor does it necessarily prohibit 'happy hours' as long as these are not designed to encourage individuals to drink excessively or rapidly.

### **Large Quantities of Alcohol For Free or A Fixed Price**

10.59 The sale, supply or provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted price to the public or to a group defined by a particular characteristic. This does not apply to a promotion or discount on alcohol for consumption with a table meal. However, it may apply specifically to promotions aimed at groups that are defined by a particular characteristic if there is a significant risk that this does not promote the licensing objectives. This restriction does not mean that promotions cannot be designed with a particular group in mind but a common sense approach is encouraged, for example, by specifying the quantity of alcohol included in the promotion and not targeting groups that may become more vulnerable, or present a greater risk of crime and disorder, as a result of excessive alcohol consumption. For example, this prohibition is likely to apply to deals such as "all you can drink for £10".

### **Prizes and Rewards**

10.60 The sale, supply or provision of free or discounted alcohol or any other item as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less where there is a significant risk to any of the four licensing objectives.

## **Sporting Events**

10.61 The sale, supply or provision of alcohol for free or for a discounted price in relation to a sporting event shown on the premises, where the sale etc. depends on the outcome of a race, match or other event. For example, this may include offering unlimited drinks based on the outcome of a sporting competition where there is a significant risk to any of the four licensing objectives. It also applies to events which are unpredictable, such as offering free double shots for every foul committed in a football match, or heavily reduced drinks for five minutes after a try is scored in a rugby match.

## **Posters and Flyers**

10.62 The sale or supply of alcohol in association with promotional materials on display in or around the premises, which can either be reasonably considered to condone, encourage or glamorise anti social behaviour or refer to the effects of drunkenness in any favourable manner.

## **Dispensing alcohol directly into the mouth**

10.63 The responsible person (see paragraph 10.56) must ensure that no alcohol is dispensed directly by one person into the mouth of another person. For example, this may include drinking games such as the 'dentist's chair' where a drink is poured continuously into the mouth of another individual and may also prevent a premises from allowing another body to promote its products by employing someone to dispense alcohol directly into customers' mouths. An exception to this condition would be when an individual is unable to drink without assistance due to a disability.

## **Free tap water**

10.64 The responsible person (see paragraph 10.56) must ensure that free potable tap water is provided on request to customers where it is reasonably available on the premises. 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 water supply.