

New Mandatory Conditions for the Sale and Supply of Alcohol

Schedule 4 of the Policing and Crime Act 2009 has amended the Licensing Act 2003 to give the Secretary of State the power to impose 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, are now in force 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. The Government expects Licensing Authorities to take any breach seriously and in most cases there is an expectation that a review of the premises licence would take place.

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.

The New Mandatory Conditions Now In Force

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.

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.

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.

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.

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.

The New Mandatory Conditions Coming Into Force On 1 October 2010

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.

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 2004 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.

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.

Q. Who is the responsible person?

A. 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.