



Mandatory Conditions and “Guidance” (!)

(Release Date: 6th April 2010)

Many of you will already be aware that the proposed Mandatory Conditions received approval from the House of Lords mid-March and that three of the proposed conditions will therefore come into force on all premises licences today (6th April). The drafting of the conditions has left a lot to be desired, so I have been waiting for the eagerly-anticipated Guidance in the hope that it would offer some clarification, before sending out this update.

The first point is that it is inexcusable for the Guidance to be published so late. The DCMS published theirs on the 30th March and the Home Office left it until just before the Easter break, which is far from helpful for any licensee who wanted to make advance plans.

The second point is that neither the DCMS or the Home Office Guidance is of any real assistance. The Guidance does little to cover any of the grey areas and allows for a number of different interpretations which will almost inevitably cause inconvenience and expense.

The three conditions that come into force today are a ban on irresponsible drinks promotions, a ban on a person dispensing alcohol directly into the mouth of another and an obligation to provide free tap water to customers on request.

The main focus of the Guidance is on irresponsible drinks promotions. It emphasises that the “responsible person” (see below) must take all reasonable steps to stop staff breaching the condition. The responsible person must also be able to *demonstrate* that they have taken all reasonable steps, so documenting the steps that have been taken will be important.

However, the Guidance is of limited practical use because it does not particularly help to determine what promotions would or would not fall foul of the condition, choosing instead to cite extreme examples such as “offering free double shots for every foul committed in a football match”.

There is a “Frequently Asked Questions” section in the Home Office Guidance where the issue of happy hours and pub crawls is raised. The response is that the “condition will not ban promotions that are run in a manner consistent with responsible drinking...These activities will only fall foul of this condition if they are promoted and organised in an irresponsible way”. That doesn’t really help in clarifying what will fall foul of the conditions!!

Additionally, the Guidance does not add much to the conditions relating to dispensing drinks directly into the mouth of another or relating to free tap water. Once again, it offers extreme examples such as, whether water is reasonably available is a “question of fact”, but it would not be reasonably available if “the water supply had temporarily been lost because of a broken mains water supply”.

All of the conditions differ from the existing mandatory conditions in the sense that they state it is the “responsible person” who has the duty to comply. The responsible person is the Premises Licence Holder, the Designated Premises Supervisor or a person aged eighteen or over who is authorised to sell or supply alcohol.

All in all, the Guidance is not particularly helpful and I suspect it will be left for the Courts to clarify what does and what does not fall foul of the conditions. That will take time and is likely to lead to even more inconsistency across different areas. I suspect that there will be a lot more comment on these conditions in coming months.

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Mandatory Code Update
(Release Date: 20th January 2010)

It appears that the introduction of a Mandatory Code has moved a step closer to becoming reality. The proposals are yet to receive parliamentary approval, but it is looking increasingly likely that a five point code will be introduced in stages through 2010. The code would:

- require licensees to provide free tap water
- require proof of age to be produced by anyone who appears to be under 18
- ban irresponsible drinks promotions such as “women drink free” and “all you can drink for £x”
- ban alcohol being dispensed directly into customers mouth, i.e. “the dentist’s chair”
- require licensees to make smaller measures of alcoholic drinks available

Breach of the above would carry a maximum punishment of up to six months in jail and / or up to a £20,000 fine.

The proposals seem to have been met with mixed responses. They have been watered down when compared to previous versions, so some are seeing these as a hit they are willing to take. The BBPA have been quoted as criticising the proposals for focusing too much on the on-trade, and Noctis have been quoted as saying that the Code is entirely disproportionate, citing the example of a potential six month jail term for somebody who refuses a free glass of tap water to a customer.

Personally, I am not convinced that the Code is entirely necessary. The vast majority of licensees already adopt a common sense approach and practices such as Challenge 21, meaning they already comply with parts of the Code. I also recall being asked at a recent Pub Watch meeting by a licensee whether or not he was legally obliged to provide free tap water. He explained that he usually had no problem in providing it, but that he had his reservations about one particular customer who came in frequently and drank nothing but tap water all night, so he was enjoying the licensee’s facilities, but paying nothing at all for them. Cases like that do raise the question whether the Code is an example of punishing all instead of using existing powers to weed out the minority of irresponsible operators.

The full implications of the Code will depend on the exact details, which remain to be seen, but we will of course keep you informed.

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NEW CODE OF PRACTICE FOR ALCOHOL RETAILERS

(Release Date: 20th May 2009)

As many of you will already be aware, last week the Home Office released a consultation on the "New Code of Practice for Alcohol Retailers".

You will probably be happy to hear that the proposed mandatory licensing conditions (conditions which would be imposed on every licence in England and Wales by the Secretary of State) have been somewhat watered down when compared to previous proposals and are not oppressively restrictive.

There are six mandatory conditions proposed in the document. The first four apply only to the on-trade and qualifying clubs, the fifth applies only to the off-trade and the sixth applies to all. The consultation summarises the conditions as follows:

1. Bans irresponsible promotions, such as "*all you can drink for £10*" or speed drinking competitions, or any promotion that encourages the consumption of large quantities of alcohol or the rapid consumption of alcohol that could increase the risk of alcohol-related crime and disorder, public nuisance, and cause a risk to public safety.
2. Bans alcohol from being dispensed directly into the mouth of any customer, which encourages the type of excessive and irresponsible drinking that could increase the risk of alcohol-related crime and disorder, public nuisance, and cause a risk to public safety.
3. Ensures that smaller measures (not glass sizes) of alcohol are made available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
4. Ensures that free tap water is available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
5. Seeks to ensure that on-line or mail order alcohol retailers have robust age-verification systems in place to prevent underage sales.
6. Through the Food Safety Act, ensuring that there is point-of-sale information visible to all customers of licensed premises about the unit content of a representative sample of drinks, and in the off-trade there is further information about health guidelines and risks.

The document also proposes a set of discretionary licensing conditions that may be imposed by the local authority on two or more premises in a particular area. There are too many conditions to list here, although I am more than happy to provide full details on request.

The consultation asks for responses by no later than 5th August 2009.

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