

Premises Licence Mandatory Conditions – What will they mean for you?



The Secretary of State has now published a draft Statutory Instrument for approval by Parliament, setting out the Mandatory Conditions to be attached to Premises Licences in accordance with the Policing and Crime Act 2009.

There are five conditions in total, some of which will come into force on 6 April 2010 and the remainder being introduced from 1 October 2010. As the conditions are mandatory, they will apply to all applicable Premises Licences from the dates stated, regardless of whether or not a Licence has been amended accordingly.

Breach of a condition is an offence punishable by a fine of up to £20,000 and/ or 6 months imprisonment (for the provision of licensable activities otherwise than in accordance with an authorisation). It is therefore crucial that you comply with all conditions from the relevant dates.

On-Licences: What are the Key Effects of this Legislation?

All five of the proposed Mandatory Conditions will apply to premises licensed for the sale of alcohol for consumption on the Premises. In summary, the conditions in full are as follows:

Coming Into Force 6 April 2010:

1. No "Irresponsible Promotions".
2. No alcohol to be dispensed directly into the mouth of customers.
3. Free tap water to be available on request.

Coming into Force 1 October 2010:

4. Age Verification Policy with Specified ID.
5. Small measures of alcohol to be available and customers to be made aware of availability.

Conditions 2 and 3 are relatively self-explanatory. However, the remaining conditions should be considered by all operators of licensed premises to determine how their business may be affected going forward.

Irresponsible Promotions (6 April 2010)

The Premises Licence holder, DPS and any other personal licence holder, must take reasonable steps to ensure that staff do not carry, out, arrange or participate in, any irresponsible promotions in relation to the premises. An 'irresponsible promotion' will include any one or more of the following activities, if it is carried on for the purpose of encouraging the sale or supply of alcohol 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:

- Games which require or encourage drinking a quantity of alcohol within a time limit or as much alcohol as possible e.g. yard of ale – type games;
- The provision of unlimited or unspecified quantities of alcohol free or for a discounted fee to the public or a group (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal) e.g. "all you can drink for £10";
- 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 e.g. buy four, get one free offers;
- Provision of free or discounted alcohol in relation to the viewing of a sporting event, dependant on the outcome of the event or the likelihood of anything occurring or not occurring e.g. discounted drinks if England score; and

It is not yet
clear whether
Licensing
Authorities will
issue amended
Licences.



- Selling or supplying alcohol in association with promotional posters or flyers which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or refer to the effects of drunkenness in any favourable manner.

Interestingly, a number of the conditions refer to the 'discounting' of alcohol, but this is not defined, so the level of discount would seemingly make little difference. More to the point, it takes no account of the fact that some retailers sell their alcohol cheap on a permanent basis!

The definition of 'irresponsible promotions' is very wide. Operators will need to consider the legality of traditional promotions and also events / functions. As part of the government consultation into the proposed mandatory conditions, we raised concern that the wording would encompass private functions, for example charitable functions or Christmas functions, where an attendee is asked to pay a set amount for attending a function with entrance, a meal and alcohol included.

The wording in the draft legislation now exempts any promotions for consumption with a table meal. However, in our view, this does not prevent such functions breaching the proposed condition, as generally at such functions, alcohol will also be provided after the meal. From 6 April, promotion for such events should therefore specify a quantity of alcohol to be included within a set price function.

Perhaps the specified activity which is most difficult to interpret is that regarding the selling of alcohol in association with promotional posters or flyers. Whether such a poster 'glamorises' anti-social behaviour or shows drunkenness in a 'favourable' manner is undoubtedly a question of fact and degree and is very much subjective. Posters/ flyers will therefore need to be considered on an event-by-event basis.

Age Verification Policy (1 October 2010)

A premises licence holder must ensure that there is an age verification policy which requires the 'responsible person' to request identification bearing their photograph, date of birth and a holographic mark from individuals who appear to be under 18 (or such older age as is specified in the policy) before serving them alcohol.

In practice, this will mean that all staff must be required to request a passport, a new-style driving licence, or an approved ID scheme card (e.g. PASS) from all individuals who appear to be under 18. If you operate Challenge 21 or Challenge 25, all staff must be trained to request this form of ID from persons under those ages.

Currently, the offence of selling alcohol (or knowingly allowing the sale of alcohol) to children is punishable by a fine not exceeding £5,000. However, going forward, if there is no age verification policy in accordance with the Mandatory Condition; this itself will be an offence punishable by a fine of up to £20,000 and/ or 6 months imprisonment (i.e. the offence applicable for selling alcohol otherwise than in accordance with an authorisation). It is therefore crucial that your age verification policy is put in place and carefully documented as a matter of urgency.


Availability of Minimum Measures and Customer Awareness (1 October 2010)

The Premises Licence holder, DPS and any other personal licence holder must make sure that alcohol is made available to customers in the following measures:

- Beer or cider, ½ pint;
- Gin, rum, vodka or whisky, 25 ml or 35ml; and
- Still wine in a glass, 125ml.

In relation to spirits, there is no requirement to have both 25 ml and 35ml measures available: there is still a choice as to whether you use 25ml or 35ml as your standard measure. Also, the new mandatory condition does not prevent you also making larger measures available. However, it is clear that from 1 October you will not be able to insist that customers only, for example, buy 'doubles', pints or 'large' glasses of wine.

There is no requirement on licensed premises to buy new glassware to comply with this condition, although an approved measure will be required. Clearly, if you do not already have the smallest approved measures, there will be a cost involved in purchasing these.



Perhaps the most easily overlooked aspect of this new mandatory condition is that you must also ensure that customers are made aware of the availability of the minimum measures.

Off- Licences: Will this Affect You?

Yes, the condition requiring an age verification policy, as set out above, will apply to off-licences as well as on-licences. This condition will come into force on 1 October 2010. The remaining proposed conditions will apply to on-licences only at this time.

FURTHER INFORMATION

Stephanie Perraton

Partner, Commercial and Dispute Resolution

T: +44 (0)121 222 3559

M: +44 (0)7778 341 244

F: +44 (0)870 460 2829

E: stephanie.perraton@hammonds.com

Nicola Smith

Senior Associate, Commercial and Dispute Resolution

T: +44 (0)121 222 3230

M: +44 (0)7771 726 555

F: +44 (0)870 460 2915

E: nicola.smith@hammonds.com

Hammonds

Berlin

Hammonds LLP
Unter den Linden 14
10117 Berlin Germany
Telephone +49 30 7261 68 000
Fax +49 30 7261 68 001

Leeds

Hammonds LLP
2 Park Lane
Leeds LS3 1ES
Telephone +44 (0)113 284 7000
Fax +44 (0)113 284 7001

Manchester

Hammonds LLP
Trinity Court
16 John Dalton Street
Manchester M60 8HS
Telephone +44 (0)161 830 5000
Fax +44 (0)161 830 5001

Birmingham

Hammonds LLP
Rutland House
148 Edmund Street
Birmingham B3 2JR
Telephone +44 (0)121 222 3000
Fax +44 (0)121 222 3001

London

Hammonds LLP
7 Devonshire Square
London EC2M 4YH
Telephone +44 (0)20 7655 1000
Fax +44 (0)20 7655 1001

Munich

Hammonds LLP
Karl-Scharnagl-Ring 7
80539 Munich Germany
Telephone +49 89 207 02 8300
Fax +49 89 207 02 8301

Brussels

Hammonds LLP
Avenue Louise 250
Box 65
1050 Brussels Belgium
Telephone +32 2 627 7676
Fax +32 2 627 7686

Madrid

Hammonds LLP
Plaza Marques de Salamanca 3-4
28006 Madrid Spain
Telephone +34 91 426 4840
Fax +34 91 435 9815

Paris*

Hammonds Hausmann
4 Avenue Velasquez
75008 Paris France
Telephone +33 1 53 83 74 00
Fax +33 1 53 83 74 01

Hong Kong*

Hammonds
Suites 3201-05, 3217-20
32nd Floor Jardine House
1 Connaught Place
Central Hong Kong
Telephone +852 2523 1819
Fax +852 2868 0069

Beijing+

Hammonds Beijing
Representative Office Hong Kong
Suite 1419 - 20
South Tower Beijing Kerry Centre
1 Guang Hua Road
Chao Yang District
Beijing 100020 China
Telephone +86 108529 6330
Fax +86 10 85296116

* Affiliated undertakings of Hammonds LLP * Representative Office

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freeport, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2010.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.