



Code of Practice on Alcohol Retailing

The Government has finally published detailed guidance on the implementation of the mandatory licensing conditions. The guidance from DCMS is generalized and puts the new conditions in the context of the licensing objectives. It refers to bans applying when there is a risk of nuisance, disorder or a danger to public safety. The Home Office guidance is more prescriptive and refers to bans applying at all times, not just where there is clear evidence of harm to the Licensing Objectives.

The first 3 new national conditions to be introduced under the Code will take effect from 6th April – these are a requirement to provide tap water on request, a ban on irresponsible promotions and on alcohol being directly dispensed into a customer's mouth. The remaining conditions – requiring an age verification policy to be in place and to make small alcohol measures available – will come into force on 1 October.

The new conditions will apply automatically to every premises, the licence does not need to be physically amended to refer to them. The conditions will be treated as if they are included in existing licences and over-ride any pre-existing conditions.

Any breach of the new conditions is a criminal offence which on conviction would be punishable by a fine of up to £20,000 or 6 months imprisonment. In most cases, there would also be a licence review

Irresponsible promotions

Defined as one “carried on for the purposes of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries significant risk to the licensing objectives”. The Home Office advice is that operators should discuss planned promotions with the police or licensing authority if they are in any doubt as to whether this is being breached.

The offence of running an irresponsible promotion will be pursued in the first instance against the responsible person – manager or dps. It will be down to the premises licence holder to demonstrate that they have taken all reasonable steps to ensure staff do not participate in, arrange or carry out irresponsible promotions. A company specific policy on this matter will be a good line of defence or reference to the Home Office guidance in company training manuals.

You should also make staff explicitly aware of the type of promotions which government have deemed to be inherently irresponsible:

1. **Drinking games:** organized drink downing or speed drinking competitions. This would not prevent customers from choosing to down a pint or yard of ale, but the pub could not organize a competition. It also doesn't prevent the manager or staff getting customers to drink up at closing time. Nor does it necessarily prohibit 'happy hours' as long as these are not designed to encourage individuals to drink excessively or rapidly.
2. **Fixed fee or discounted price:** this ban applies to promotions which are aimed at specific groups such as “women drink for free”, “half price for under 25s”, “discount nights for students”, “cheap drinks for fans of a certain team”. 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 rather than all you can



drink. The focus of the ban is on promotions which offer a large volume of discounted or free drink eg “all you can drink for £10”, “10 pints for £10” or “free drinks until 10pm”.

3. **Prizes and Rewards:** you will no longer be allowed to run promotions making customers drink a certain amount of alcohol inside a time limit of less than 24 hours. This rules out promotions like “drink 4 pints get the 5th for free” or “drink 5 bottles and win a free gift”
4. **Sporting Events:** promotions based on things which happen during a sporting event being watched on the premises will be banned eg “half price drinks if England scores a goal” or “free drinks if your team wins”. It would also apply to events which are unpredictable eg free doubles for every foul committed or supersize drinks for a standard price after a try.
5. **Posters and Flyers:** promotions are not just linked to purchases. Promotional flyers and display materials will also be banned if they condone, encourage or glamorize drunkenness or anti-social behavior.

The Guidance states that “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 organized and promoted in an irresponsible way”. The focus will be on the intent and the management of the promotion and it will be for the licensee to make sure that the licensing objectives are not breached.

Dispensing alcohol directly into the mouth

This condition means that you cannot run activities that involve alcohol being directly poured into the mouth of a customer eg dentists chair or tequila shots from the bottle. This condition not only prevents the premises from engaging in this activity, but also requires the DPS or manager to ensure that no-one engages in this on the premises. You must ensure that staff are briefed to intervene if a customer pours alcohol direct into another customers’ mouth and to regulate the activities of other promotional companies who may be on the premises.

The only exception would be when an individual is unable to drink without assistance due to a disability.

Free tap water

All premises have to give customers tap water for free if they ask for it and it is reasonably available. This is not defined further in guidance, but it would be reasonable to assume that a customer was someone who was making a purchase on the premises – either food or other drink – particularly as the aim of the legislation is to help customers space their drinks out. This does not cut across the ability of a licensee to refuse to serve anyone. It is a moot point, however, whether this condition would be met if a customer was refused tap water on the basis that no other purchase was being made. Guidance does not help with this, but it would be reasonable to assume it would not give rise to a breach.

What is meant by reasonably available is a question of fact eg the water supply was temporarily lost or the water was not drinkable.

A more detailed briefing and sample policy statements on the conditions to take effect from 1 October will be circulated shortly.