



DRAFT CODE OF PRACTICE ON ALCOHOL RETAILING

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit comments on the draft Mandatory Code of Practice. Our response builds on the comments submitted as part of the Safe, Sensible, Social consultation and supports and endorses representations made by the British Beer and Pubs Association.

In commenting on the proposals as presently drafted, we do not wish to deny our opposition in principle to the introduction of such a code. We continue to believe that the draft code is an inappropriate and disproportionate response to Ministerial concerns about levels of consumption and alcohol related harm. The Government has, however, failed to provide any robust evidence of the harm to be addressed by such a measure and the evidence base for alleging poor retailing practice is too small and self-selecting to make it a reliable, statistically significant basis for policy making.

The Ministerial foreword to the Safe, Sensible, Social consultation states that efforts will be focused on the irresponsible minority and that steps to be taken to ensure that measures to tackle bad practice “do not unduly penalise those consumers who benefit from legitimate promotions responsibly”. This has been reiterated in subsequent discussions with officials. The measures set out in the draft code fail that test. The benefits accruing from this could only be realised by disproportionate cost to responsible retailers and regulatory authorities.

We would therefore urge the Government to reconsider the need for the Code. There is a raft of existing legislative powers which can already be used by licensing authorities and other regulatory bodies to address any specific problems of alcohol related crime and disorder or public nuisance which may arise from particular premises.

Better Regulation

We do not believe the code as presently drafted meets the Government's principles of good regulation.

- **Transparent:** the code is unclear in its aims and objectives. It states that it is concerned with implementing the Licensing Act 2003, but the majority of its provisions do not relate to the attainment of the licensing objectives. Indeed, the aims and objectives make clear that the code is designed to tackle consumption and health-related issues.
- **Accountable:** it is not clear how the code will be enforced – indeed some of its provisions do not appear to be enforceable. The absence of robust central guidance on the way in which the local conditions are to be applied, and the evidence base required to justify their imposition, gives rise to concerns about accountability
- **Proportionate:** the clauses of the code will become mandatory conditions attached to the premises licence. A breach of the conditions would carry a penalty of up to £20,000. This would apply equally to the failure to display a notice and the offence of selling to someone who is underage. In the absence of real evidence of harm, this appears to be disproportionate
- **Consistent:** the code appears inconsistent with the principles underlying the Licensing Act 2003, which states that conditions must be proportionate, targeted and specific and above all should not duplicate existing legislation. Concerns arise in respect of consistency given the absence of national guidance
- **Targeted:** the code is premised on a whole populace approach which would penalise the vast majority of social drinkers and responsible, law abiding retailers. Its provisions are not designed to address specific problems but, if they were, it would simply reinforce our



argument that the code is unnecessary. The Licensing Act 2003 is specifically designed to target specific solutions to specific problems and direct them at identified premises.

We are also concerned that the code does not have a clear legal basis – being neither an Approved Code of Practice nor recommendations and guidance on accepted good practice; the latter should not contain requirements.

Mandatory Conditions

The following comments should not be taken as indicating support for the proposed approach, but are designed to be constructive and helpful.

- **Aim 1:** the stated aim of the first 4 conditions relates explicitly to controlling levels of consumption. As drafted this does not relate to the licensing objectives but rather to public health. Either it needs recasting with references to the licensing objectives or it needs to be clear that it is addressing matters outside the licensing regime. Whilst outlets have a legal responsibility to ensure alcohol is retailed responsibly and sales are not made to vulnerable and clearly identified groups, consumption is a matter for individual responsibility. In any case, there is grey area here which overlaps with entirely reasonable commercial practice. For example, asking a customer buying 2 glasses of wine whether they would like to buy the bottle or even stating that we do sell by the bottle, would appear to be counter to this aim.
- **Paragraph 1:** the Association has no objection to the proposals set out in this section to control irresponsible promotions. These mirror the BBPA Guidance on Point of Sale Promotions and address perceived gaps within them. We note, however, that even the KPMG Report shows that irresponsible promotions are at a very low level. It is questionable, therefore, whether there is a real need to introduce additional regulatory requirements.
- **Paragraph 3:** we are unclear as to why this condition should only be applied to premises selling alcohol for consumption on the premises. We also note that the aim of this measure is again health led, rather than being linked to the licensing objectives.

Price marking legislation does not requires all drinks to be included on price lists – the suggestion that unit content could be displayed on sales lists therefore imposes a very real cost on business and difficulty in compliance. At the very least, all pubs would have to reprint their price lists to include all products. Pubs with guest beers would have further administrative burdens in contacting suppliers for unit information and would have to display this on blackboards or at the pumps. We are also not clear whether, if the price list was not displayed at the immediate point of sale, pubs would be required to display unit content information on the bar.

- **Aim 2:** again, this does not relate to the licensing objectives and is a clear public health objective. Consumer choice should be a commercial, rather than a regulatory one.
- **Paragraph 5:** there is a clear duplication here with existing Weights & Measures legislation, and we note that this is subject to separate consultation which proposes to allow multiples of a third of a pint; this measure is not referred to here. The Licensing Act clearly states that conditions should not duplicate existing statutory regimes. The condition goes further, however, in requiring premises to serve both 25ml and 35ml spirits measures – at present premises have to opt for one or the other. A requirement to provide both measures would clearly increase operational costs.



We are also concerned about how this measure could be enforced – how can you prove that an individual has not specified in advance which measure they want? Common commercial practice is to ask customers whether they want a small or large glass of wine, but this would appear to breach this condition. We suggest that this is reworded to take account of normal commercial practice.

- **Aim 3:** again, this does not relate to the licensing objectives and is a clear public health objective. This is a matter of individual responsibility and pubs can and do provide a range of soft drinks and food to allow people to control their drinking.
- **Paragraph 6:** we are not aware of any evidence that legislation is necessary and that people are being refused free tap water. We are also unsure how this could be drafted so as to make it enforceable. Since a breach of this would attract a fine of up to £20,000, this would appear to be disproportionate.
- **Paragraph 7:** preventing under age sales is an absolute legal requirement and premises are required to demonstrate due diligence to ensure that this is met. The proposed condition is poorly drafted and appears to be unenforceable. It is not clear how a DPS could ensure in absolute terms that no staff sell to some one who appears to be less than 21 years of age. The assessment of age will be subjective and in some cases age will be known, but it would appear that failure to ask for proof of age could constitute a breach of the condition. We are not sure how the DPS could ensure compliance with this condition aside from asking for ID from all customers.

Effectively this condition mandates Challenge 21 and therefore removes a due diligence mechanism for staff and operators. If measures of this nature are required, we strongly urge that they are introduced on a targeted basis where there is clear evidence of problems arising at a particular premises. We do believe that references to Challenge 21 should be included in the local rather than national conditions.

- **Paragraph 8:** the requirement to display a written notice about under age or proxy purchases is not, in itself, a specific cause of concern but it should be noted that this brings the number of statutory notices which a pub must display to 8 and the requirement that it must be visible to all customers “upon entering the premises” may be unduly prescriptive. This would, of course, impose a cost on all operators.

We note that half of the proposed mandatory conditions applying to outlets selling alcohol for consumption on the premises will impose an additional operational cost. These costs will be applied to **all** outlets – not just the irresponsible minority. Recent discussions with officials have suggested that responsible operators will not be affected by the national mandatory code. The analysis above reveals that that is not the case. We are working with a number of operators to put an estimated compliance cost against each of the Code’s provisions and will share this with officials shortly.

Local Conditions

We note that these conditions represent examples which may be selected and applied at a local level by the licensing authority to a number of premises in a given area. The Licensing Act 2003 is quite specific that blanket conditions should not be applied, and a number of licensing authorities who have attempted to do this have been successfully challenged in the courts. We are therefore dismayed that the Government is attempting to redraft legislation by means of a retroactive Code of Practice.



The conditions listed in this section appear very much to fall within the definition of an Approved Code of Practice, enshrining best practice in law. We are concerned that there is no detail on the process by which these conditions could be applied, the burden of proof required to justify the imposition of such onerous restrictions and a mechanism for appeal. These are all critical issues in considering whether this legislation is a proportionate and necessary response to alcohol related crime and disorder.

We are also concerned that many of the proposed conditions are subjective, potentially unclear and confusing and which ultimately will require an exercise of judgement which could be challengeable in law.

- **Paragraph 10:** we are concerned that this condition explicitly bans happy hours. In previous discussions there has been an apparent acceptance of the fact that these can be legitimate commercial activities, designed to promote trade during normally quiet hours, which can be engaged in without endangering the licensing objectives. We are concerned that this may be unduly prescriptive.
- **Paragraph 12:** we are unclear what constitutes “very low priced alcohol”. How will this be determined? Will there be a nationally set minimum or will this be a subjective judgement exercised by licensing authorities. There is a very real danger of inconsistency across the country.
- **Paragraph 13:** this appears to be unduly prescriptive in specifying the details of the notice to be provided. This would appear to suggest that a notice on the cash register, or at the entrance could be in breach of a condition and subject to a £20,000 fine. This appears to be disproportionate and the level of detail in stark contrast to other proposed conditions which are extremely vague. We are also unclear how such a measure could be applied to hotel bars, restaurants and other waitress serviced bars.
- **Paragraph 14-16:** this is the single greatest issue of concern to operators because the level of detail specified in these paragraphs will mean significant additional operational costs, which could be in the region of £20,000 per premises per annum.

Insistence on accredited, comprehensive training for all staff - which is what paragraph 15 would translate into in practice as smaller operators will know that an accredited scheme from an industry body will be acceptable - will be extremely costly because of the very high level of staff turnover in the industry. In many companies and individual premises, staff turnover will be in excess of 100% per annum.

Training – the way in which it is structured and applied in practice – are essentially commercial matters and this should be left to the discretion of the operator. It must be borne in mind that these conditions could apply to an owner operated bar, a family run restaurant and a large multi-national corporation. The resources available to each are very different and therefore a condition of this nature may not have any impact on an All Bar One, for example, but could have very real and serious consequences for an individual pub tenant. Many smaller operators will not have a formal written training programme, and training will be provided ‘on the job’.

The terms of these conditions specify a very prescriptive process for formally approving – and potentially amending – a company’s training programme and process. We are not clear why this should be required nor what expertise on operational matters the licensing and



responsible authorities will have. This seems to add an unnecessary level of bureaucracy and administrative cost.

It is worth noting in this context that the Elton Report on licensing highlighted the heavy cost burden borne by licensees in copying and circulating applications to all responsible authorities. This can be as much as £500 per application. The provisions of paragraph 15 appear to replicate this cost without any real justification.

If there are specific problems arising on the ground which may be addressed by means of training, then there may be a case for applying such a specific and targeted condition to affected businesses; although again we question why this should be applied on a blanket basis rather than via the existing review mechanism. This generic and all-encompassing approach appears to be disproportionate in breach of the principles of good practice.

- **Paragraph 17-19:** it appears disproportionate to impose a seating requirement on all businesses within a given area. This takes no account of trading style and could have a very real impact on capacity for the smallest venues eg very traditional pubs in central London, which will adversely affect profitability and could result in closure of some outlets. Again, this is best left to targeted conditions applied to individual outlets where there is a very real and identified problem.
- **Paragraph 22:** as presently drafted, this implies a condition requiring all identified premises within a given area to employ doorstaff to make these checks. For premises which are not already required to employ doorstaff, this will have significant additional operational costs to comply with the requirements. It could also see a restaurant or a family oriented pub in a given area having to subject customers to checks.
- **Paragraph 23-25:** these conditions appear to be unduly prescriptive in specifying the level of checking. It would mean that a check not carried out at the right time could result in a fine of £20,000, even if the delay was just 5 minutes. It also allows no scope for operational demands and if applied in this prescriptive manner will require the employment of additional staff hours just to meet these requirements. There will therefore be operational costs. The level of checks should be determined by the manager of the premises and be proportionate to the level of trade. So, for example, at busy trading times and in larger premises checks and collection will be ongoing and during quieter trading periods, less frequent timings would be more appropriate.

It should be noted that paragraph 24 duplicates the requirements of existing drugs legislation.

We are concerned that, under paragraph 25, the onus for tackling potential trouble-makers falls on bar staff. Where persons are causing a disturbance, are drunk or are under 18 there is a very real risk to staff in trying to deal with this and it should be open to them to decide to call in the police to deal with the situation in the first instance. It should also be noted that it is not against the law for under 18s to be on licensed premises at certain times and provided they are accompanied by an adult.

- **Paragraph 27:** this appears to duplicate existing health and safety legislation on noise at work.
- **Paragraph 29:** the requirement for all premises within a given area to have a dispersal policy appears to be disproportionate. Such policies are normally only required for large



capacity, high risk premises. The majority of these will already have these in place and those who do not and where problems arise could be tackled through individually targeted conditions applied following a review.

- **Paragraph 31:** we are concerned that this will add an unnecessary additional layer of bureaucracy for licensees to demonstrate that they have fulfilled this requirement. The formal requirement to review every 8 weeks, rather than when new risks are identified or arise, will be particularly onerous. The original licence application is based on a risk assessment against the licensing objectives. If the police have concerns about crime and disorder in or around licensed premises then they are able to require additional risk assessment by means of a review or using the powers under the Violent Crime Reduction Act. Separate legislation already requires comprehensive risk assessments on a range of related health and safety issues.
- **Paragraph 32:** it is not clear whether this requirement would only apply to off-licences or to all premises. Clarification is also required as to whether this requirement applies only to display separate to point of sale. It is also worth noting in this context that CCTV is often subject to separate police requirements which can impose additional and significant costs.

JNRB/KN

Ealing

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Appendix 1 – Assessment of compliance costs



**DRAFT ALCOHOL CODE OF PRACTICE
ESTIMATED OPERATIONAL COSTS**

The ALMR represents the interests of small, independent managed pub and bar operators. Our core members have estates of fewer than 50 outlets and are therefore very close to their business and have a good understanding of how legislative proposals translate into operational practice and cost. We have asked a panel of operators to estimate how much it would cost to comply with the Code's provisions. This is set out below together with interpretive notes.

In addition to these costs, it should be noted that there will be additional one off administrative and training costs associated with familiarisation with the new licensing conditions, determining operational impact (if any) and briefing staff accordingly.

Code's Provisions	First Year Costs	Ongoing Costs
National Mandatory Conditions		
Display of unit content of alcohol products at point of sale (we have assumed that this is simply a revision of price lists and ad hoc pricing displays)	60-100	30
Drinks must be available and offered for sale in each of the lawfully prescribed standard measures 125ml (if not already offered)	225 ¹	150
Spirits (at present operators have to choose one measure or the other so this will impose a cost on all businesses as they will have to stock both)	205	100
Challenge 21 policy (if not already in place)	350 ²	30
Written notice re under age and proxy purchases (existing notices would need to be rewritten)	50	
SUB-TOTAL	£885-925	£310
Local conditions		
Development and implementation of approved written training scheme	1250 ³	500
Administrative costs associated with gaining approval of scheme and consultation with responsible authorities	1,500	
Ongoing staff training/refresher training		300
Drug and weapon checks (if doorstaff not already in place)	1300	23,400 ⁴ - 28080
Clearing empty glasses every 15 mins		4420 ⁵
Toilet checks every hour		2,184 ⁶
Outside area checks		2184 ⁷
Partial requirement for polycarbonates/glass ban	850	1560 ⁸
Measures to restrict incidental music to 80dB	1000-3000 ⁹	300
Development and implementation of a dispersal policy (if not already in place)	1500	30
Crime risks assessment every 8 weeks	1625	2150
CCTV (if not already covering display)	1800-4500 ¹⁰	550
SUB-TOTAL	£10,825-15,525	£37,578-41,978
GRAND TOTAL IF ALL PROVISIONS APPLIED	£11,710-16,450	£37,888-42,288

¹ Assume 3 cases of glasses initial purchase and case every 2 months to replace

² This is the actual cost of implementing the scheme from scratch and based on the costs in Bexley where this has become a requirement. Ongoing costs relate to training and manuals

³ This is the cost of a BII course – for smaller operators, purchasing an accredited scheme is going to be the easiest way of ensuring compliance . Assumes 6 staff per site and staff turnover of 66%

⁴ If doorstaff are not already employed at the premises, they would be required to be fulfil the requirement to offer a knife and drugs check to all customers. Initial costs are for SIA registration. Ongoing costs are based on 2 doorstaff at a cost of £150 per night, for 3 nights a week

⁵ Assumes an additional 20 mins for every trading hour

⁶ Assumes an extra 5 mins per trading hour

⁷ This will be higher if it requires door staff to patrol outside areas

⁸ This is an actual cost borne by an outlet which has a partial glass ban in place for certain events and times of the week

⁹ The lower figure represents the cost of an assessment by an acoustic engineer and monitor noise. The higher figure is what it could cost to soundproof the outlet and install noise limiters if the limit was in danger of being breached

¹⁰ Cost will depend on size of bar areas and building – ongoing costs relate to annual maintenance and staff training