



Government Calls Time on Irresponsible Drinks Promotions.

BRIEFING

Introduction

In our previous Briefing Note, we highlighted the Government's new proposals to introduce a mandatory code to tackle the problem of binge-drinking.

The mandatory conditions have now been drafted and approved by both Houses of Parliament. Whilst one of the new conditions affects both the on and off licensed trade, it is clear that the Government has taken the view that the on-trade should shoulder most of the responsibility for the effects of drunkenness on the streets of Britain, with the spotlight being focused on irresponsible promotions of alcohol.

The New Mandatory Conditions

The main points which will affect the on-licensed trade are as follows:-

- Staff will not be allowed to arrange or participate in any irresponsible promotions in relation to the premises.
- An 'irresponsible promotion' is an activity which encourages the sale and consumption of alcohol in a manner which carries a 'significant risk of contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children' (the licensing objectives).

- The activities include:-
 - Games or other activities which encourage individuals to drink alcohol within a time limit or drink as much as possible;
 - The provision of unlimited or unspecified quantities of alcohol for free or for a fixed or discounted fee (other than any promotion in relation to alcohol consumption at a table meal);
 - The 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;
 - The provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event where that provision is dependent on the outcome of an event or the likelihood of anything occurring or not occurring;
 - Selling alcohol in association with promotional posters or flyers which could reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to drunkenness in any favourable manner.

In addition, free tap water should be available to customers on request and the licensee and his or



her staff should ensure that no alcohol is dispensed directly by one person into the mouth of another, with the aim of banning the notorious 'dentist chair' which has become synonymous with the binge-drinking culture.

Licence holders will also need to ensure that alcoholic drinks are made available to customers in the following measures:-

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

Customers should also be made aware that these measures are available. This is aimed at preventing customers from (perhaps unintentionally) consuming more alcohol in circumstances where they are automatically served a large glass of wine or spirits in double measures without being offered a choice of a smaller quantity.

Finally, a new condition which requires the premises licence holder to ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol will apply to off-licences as well as the on-trade.

The policy must require an individual who appears to be under 18 years of age (or such older age as may be specified in the policy) to produce ID bearing their photograph, date of birth and a holographic mark. The Government proposes to issue specific guidance on this condition to help businesses to implement a suitable policy.

It should be noted that the Government has decided not to proceed with the proposed age verification condition for online and mail order alcohol purchases at this stage.

Time Frame

Most of the mandatory conditions will come into force on 6th April 2010, with the exception of:-

- The condition requiring premises to implement an age verification policy; and
- The condition relating to alcohol measurements,

which will both come into force on 1st October 2010.

The Government's Explanatory Note to the new conditions states that each mandatory condition takes precedence over any existing licensing conditions to the extent that the mandatory conditions are identical or inconsistent and more onerous.

In addition, the statutory guidance which is issued under section 182 of the Licensing Act 2003 which local authorities must have regard to whilst discharging their duties under the Act will be revised to reflect the changes brought about by the introduction of these new conditions.



What Impact will the Mandatory Conditions have?

The requirement that the activity should carry a 'significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children' seems difficult to enforce. A premises licence holder who has frequently carried out drinks promotions and has experienced little or no trouble may decide that the drinks promotions are not irresponsible, yet could be in breach of one of the mandatory conditions. There is a danger that the mandatory conditions will be enforced inconsistently.

In practical terms, aside from the promotions which are clearly caught by the legislation such as 'all you can drink' offers and 'women drink free' nights, licensees will need to consider whether promotions which offer merchandise to customers if they consume a certain amount of alcohol will be a breach of a condition.

With the World Cup looming, pubs and bars will also need to satisfy themselves that any drinks promotions will not fall foul of the mandatory conditions.

All licence holders will need to consider training staff on the age verification policy which will apply to the premises. Staff may also need to be trained to check that a customer's ID has a holographic mark, as well as a photograph and date of birth. Whilst this requirement is aimed at preventing underage customers from using fake ID to obtain

alcohol, licensed premises should be aware that some older or non-British passports may not have a holographic mark. The consequences of a breach of the new laws should not be ignored and may be punishable by a fine of up to £20,000 and or 6 months in prison.

Conclusion

'Binge drinking', 'drunkenness', and 'alcohol-related violence' are buzz words which are frequently cited by the media as a curse of modern society. Pressure has been put on the Government to address the problems which communities face as a result of individuals consuming too much alcohol. Whilst measures to tackle the binge-drinking culture are to be welcomed, these conditions may heap further pressure on the entertainment industry which is already struggling following the worst recession in decades.

Perhaps the revised section 182 guidance will shed more light on how these conditions will operate in practice. Meanwhile, only time will tell what the true impact of the mandatory conditions will be on the licensed trade and Britain's binge drinking culture.

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