

**EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS)
(AMENDMENT) ORDER 2014**

2014 No. 2440

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to tighten the existing mandatory licensing conditions relating to the carrying on at licensed premises of irresponsible promotions, and the provision of free water, the adoption and application of age verification policies and the provision of small measures at licensed premises. This Order will be made in accordance with powers in sections 19A and 73B of the Licensing Act 2003 (“the 2003 Act”) on the basis that the Secretary of State considers that it is appropriate to do so for the promotion of the licensing objectives in the 2003 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2003 Act sets out a detailed framework for the regulation of licensable activities; these activities include the sale and supply of alcohol. Under this framework, premises licences or club premises certificates authorise the holder of the licence or certificate to use the premises to which the licence or certificate relates for licensable activities. The licence or certificate contains conditions; some are mandatory in accordance with the 2003 Act and some are imposed by licensing authorities. The sale or supply of alcohol is subject to certain mandatory conditions prescribed by the 2003 Act.

4.2 The Policing and Crime Act 2009 amended the 2003 Act to confer a power on the Secretary of State to specify further mandatory licensing conditions relating to the sale by retail or supply of alcohol by premises licences and club premises certificates. The amendments to the 2003 Act introduced an enabling power that allows the Secretary of State to set out (in secondary legislation) further mandatory licence conditions relating to the sale and supply of alcohol for all new and existing relevant premises licences and for all new and existing relevant club premises certificates respectively (or for those premises licences or club premises certificates of a particular

description). A “relevant” licence or certificate means a licence or certificate which authorises the sale or supply of alcohol.

- 4.3 All conditions must be made with a view to promoting the four licensing objectives set out in the 2003 Act. These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.
- 4.4 This Order amends the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 (“the 2010 Order”) by replacing the mandatory conditions prescribed in the 2010 Order with the conditions prescribed in this Order. The conditions apply to all relevant premises licences and all relevant club premises certificates authorising consumption of alcohol on the premises, with the exception of the age verification condition, which applies in addition to licences and certificates which permit the supply of alcohol only for consumption off the premises.
- 4.5 This Order also makes provision to the effect that one activity which is not prohibited by the 2010 Order (the provision of unlimited or unspecified quantities of alcohol for free or for a discount where the alcohol is consumed at a table meal), as it was in force immediately before the coming into force of this Order, will continue not to be prohibited provided certain conditions are met. These conditions are that the activity is available only to an individual who holds a ticket or other written invitation in respect of that activity which was purchased by, or given to, that individual on or before 30 September 2014, and the activity takes place on or before 5 April 2015.
- 4.6 The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 will represent the third use of the powers inserted into the 2003 Act by the Policing and Crime Act 2009.

5. Territorial Extent and Application

- 5.1 This Order extends to England and Wales only.

6. European Convention on Human Rights

- 6.1 Norman Baker, the Minister of State for Crime Prevention, has made the following statement:

In my view the provisions of the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

- 7.1 Following its review of the mandatory licensing conditions and the views expressed in the consultation, the Government intends to make the existing mandatory licensing conditions (five of which apply to all on-trade alcohol licences in England and Wales with one – on age verification policies – also applying to the off-trade) more effective and ensure they are consistently implemented, particularly those regulating irresponsible sales and promotions.
- 7.2 This will enable tougher action on irresponsible promotions in pubs and clubs: assisting enforcement and other agencies and the on-trade to tackle crime and disorder and promote the other licensing objectives by simplifying and tightening the law on what constitutes an irresponsible promotion. Police licensing officers and businesses have both raised concerns that there is often inconsistency with the application of this condition, and so this will help to remove any uncertainty. This Order simplifies and tightens the law on what constitutes irresponsible promotions by making some promotions irresponsible in all circumstances, and clarifying which promotions are still subject to the test of significant risk.
- 7.3 The changes will also strengthen measures to help people drink more responsibly by requiring on-trade premises to list the price of small measures, which they must already offer, on menus or price lists alongside the price of other serving sizes. If a customer does not specify a measure, there will also be a requirement to make them explicitly aware of those that are available. It will also clarify that the water that all on-trade premises such as pubs and clubs must offer their customers is drinkable. Both of the measures will encourage customers to balance their alcoholic and non-alcoholic consumption.
- 7.4 The changes will also improve age verification requirements: making it clear that responsibility lies with the designated premises supervisor, already responsible for the day-to-day management of the premises, for implementing the age verification policy; and broadening the definition of identification documents which can be used to prove age to include those bearing ultra-violet fluorescent ink. Some foreign passports and identity cards do not bear the holographic mark currently required to be valid as identification for the purchase of alcohol. This will mean that more visitors to England and Wales can be confident of proving their age.
- 7.5 Alcohol-related harm is estimated to cost society £21bn per year, with £11bn of this relating to alcohol-related crime. In nearly half (49%) of all violent incidents, the victim believed the perpetrator to be under the influence of alcohol. The most common type of anti-social behaviour experienced or witnessed – by one in ten people (10%) – was drink related.

- ***Consolidation***

- 7.6 The Department does not consider that consolidation is necessary. This Order will in effect replace the mandatory conditions prescribed in the 2010 Order.

8. Consultation outcome

8.1 The Department carried out a consultation on the Alcohol Strategy from 28 November 2012 to 6 February 2013, and around 1,450 responses were received. This consultation included questions on reviewing the mandatory licensing conditions. A number of suggestions were received, but in order to strike a balance between promotion of the licensing objectives and burdens on business, it was decided to restrict the changes to those which caused the most concern, namely:

- Simplifying and tightening the law on irresponsible promotions;
- Requiring on-trade premises to list the price of small measures – ie 125ml glasses of still wine, 25ml measures of gin, rum, vodka and whisky and half pints of beer and cider– alongside other sizes on menus and price lists, and make customers aware of their existence where they do not specify a measure;
- Requiring availability of free, potable drinking water;
- Clarify that responsibility for age-verification lies with the designated premises supervisor; and
- Allowing documents bearing ultra-violet fluorescent ink to be used as age verification documents.

8.2 Details of the consultation and the Government's response are available on the Department's website at <http://www.homeoffice.gov.uk/>.

9. Guidance

9.1 Licensing authorities must have regard to the statutory guidance (issued under section 182 of the 2003 Act) in the exercise of their functions under the 2003 Act. The statutory guidance will be revised to reflect the changes brought about by the coming into force of this Order.

10. Impact

10.1 There is an impact on businesses and public bodies, particularly, local authorities and police. The best estimate of transition costs to business, licensing authorities and police is £3.09 million, which is spread over two years. There are ongoing costs linked to compliance of an estimated average of £0.11m per year. The total costs, discounted over 10 years (including transition costs and ongoing costs) are equivalent to around £0.4m on average per year.

10.2 The average annual cost in the 'best estimate' scenario is £0.4m. Therefore the proposals would have to result in a reduction of 216 assaults without injury or 358 criminal damage offences in order to 'break even' (i.e. for the benefits of crime reduction to offset the costs). This is equivalent to only 0.08% of

alcohol related assaults without injury and 0.003% of criminal damages, suggesting that these targets are highly achievable should the proposals have even a minor impact on crime and disorder.

- 10.3 An Impact Assessment has been prepared for this instrument and will be published alongside the Explanatory Memorandum.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Government consulted with businesses in order to minimise any potential burdens. The new mandatory conditions will apply to all alcohol retailers and hence they will apply to many small businesses.
- 11.3 The aim of the mandatory conditions is to ensure that those businesses, both small and large, who are selling alcohol irresponsibly, act more responsibly to help tackle alcohol-related crime and disorder. There is no available data which can tell us whether small businesses are more likely to offer irresponsible promotions, to provide tap water that is unsuitable to drink or fail to list the prices of small measures. It is therefore difficult to estimate whether small businesses will be disproportionately affected by the amended conditions. As previously highlighted, the requirement for the designated premises supervisor to ensure that an age verification policy is applied will have no impact on small businesses where the premises license holder and the designated premises supervisor are the same person.
- 11.4 The basis for the final decision on what action to take to assist small business is that the Government will produce exemplar policies and good practice guidance to further minimise impact.

12. Monitoring & review

- 12.1 The application and effect of this Order will be kept under review by the Department.

13. Contact

- 13.1 Debbie Goodier, Drugs and Alcohol Unit, the Home Office on 020 7035 0572 or Debbie.goodier2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.