

NORWICH CITY COUNCIL

Report for Resolution

Report To Licensing Committee

18 March 2010

ITEM

7

Report of Head of Legal, Regulatory & Democratic Services

Subject The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

Purpose

To inform Members of proposals to introduce further mandatory licensing conditions relating to the sale by retail or supply of alcohol in premises licences and club premises certificates.

Recommendation

That Members note the current position regarding the proposed introduction of further mandatory licensing conditions relating to the sale by retail or supply of alcohol in premises licences and club premises certificates.

Financial Consequences

The financial consequences of this report are nil.

Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

Contact Officers

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Background Documents

Background

1. The Licensing Act 2003 (2003 Act) sets out a system for regulating, among other things, the sale and supply of alcohol. Under this system, premises licences authorise the holder of the licence to use the premises to which the licence relates for licensable activities. The premises licence details operating conditions. The supply of alcohol is also subject to mandatory conditions set out in Part 3 of the 2003 Act. An equivalent system applies to the supply of alcohol under a club premises certificate.

2. The Policing and Crime Act 2009 (2009 Act) confers a power on the Secretary of State to specify further mandatory licensing conditions relating to the sale by retail or supply of alcohol in premises licences and club premises certificates. Schedule 4 to the 2009 Act amends the 2003 Act and creates an enabling power that allows the Secretary of State to set out (in secondary legislation) mandatory licence conditions relating to the 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). “Relevant” here refers to the licence being for supply or retail of alcohol (as defined in Schedule 4).

3. Paragraph 1 of Schedule 4 to the 2009 Act amends section 19 of the 2003 Act so that where premises are licensed for the sale of alcohol, that licence is subject to the mandatory conditions specified in an order made by the Secretary of State. Paragraph 2 inserts a new section 19A of the 2003 Act to allow the Secretary of State, in secondary legislation, to specify up to nine mandatory licensing conditions that apply to all current or future premises licences. Each mandatory condition takes precedence over any existing licensing conditions to the extent that the mandatory conditions are identical or inconsistent and more onerous.

4. Paragraphs 3 and 4 of Schedule 4 are equivalent to paragraphs 1 and 2 respectively, except that they relate to club premises certificates rather than to premises licences (the list of conditions in respect of club premises certificates could be different to that for premises licences). These certificates relate to members’ clubs rather than nightclubs.

5. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 represents the first use of the powers inserted into the Licensing Act 2003 by Schedule 4 to the Policing and Crime Act 2009. A copy of the Order is attached at Appendix A.

New mandatory conditions

6. The conditions contained in the Order are:

1.—(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises 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—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) 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;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

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

2. *The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).*

3. *The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.*

4.—(1) *The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.*

(2) *The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.*

5. The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

7. It is proposed that conditions 1, 2 and 3 will come into force from 6 April 2010, with conditions 4 and 5 taking effect from 1 October 2010.

8. The detail of the new mandatory conditions have been reported to the Norwich Licensing Forum and further notification to the licensed trade will take place through the media and via the council's website.

APPENDIX A

Draft Order laid before Parliament under section 197 of the Licensing Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. LICENCES AND LICENSING

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

*Made - - - - ****

Coming into force

Paragraphs 4 and 5 of the Schedule 1st October 2010

Remainder 6th April 2010

The Secretary of State makes the following Order in exercise of the powers conferred by sections 19A, 73B and 197(2) of the Licensing Act 2003 **(a)**. In accordance with section 197(4) of that Act **(b)**, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament. In accordance with sections 19A(1) and 73B(1) of that Act, the Secretary of State considers it appropriate for the promotion of the licensing objectives **(c)** to specify the conditions set out in this Order.

Citation and commencement

- 1.—(1) This Order may be cited as the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.
(2) This Order shall come into force on 6th April 2010 other than paragraphs 4 and 5 of the Schedule which shall come into force on 1st October 2010.

Interpretation

2. In this Order—

“the Act” means the Licensing Act 2003;

“anti-social behaviour” has the meaning given in section 36 of the Anti-social Behaviour Act 2003 **(d)**;

(a) 2003 c.17; sections 19A and 73B were inserted by paragraphs 2 and 4 respectively of Schedule 4 to the Policing and Crime Act 2009 (c.26).

(b) Section 197(4) was amended by paragraph 44 of Schedule 7 to the Policing and Crime Act 2009.

(c) See section 4(2) of the Licensing Act 2003.

(d) c.38

“disability” has the meaning given in section 1 of the Disability Discrimination Act 1995**(a)**;

“relevant premises” has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;

“responsible person” has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act.

Mandatory conditions

3.—(1) Subject to paragraph (3), in relation to an existing or future relevant premises licence, the conditions set out in the Schedule are specified for the purposes of section 19(4)(b) of the Act (mandatory conditions where licence authorises supply of alcohol).

(2) Subject to paragraph (3), in relation to an existing or future relevant club premises certificate, the conditions set out in the Schedule are specified for the purposes of section 73A(c) of the Act (mandatory conditions relating to the supply of alcohol to members or guests).

(3) The conditions in paragraphs 1 to 3 and 5 of the Schedule do not apply where the licence or certificate authorises the sale by retail or supply of alcohol only for consumption off the premises.

Home Office *Name*

Date Parliamentary Under Secretary of State

SCHEDULE Article 3

Mandatory Licensing Conditions

1.—(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises 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—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(a) c.50.

(b) Section 19(4) was inserted by paragraph 1 of Schedule 4 to the Policing and Crime Act 2009.

(c) Section 73A was inserted by paragraph 3 of Schedule 4 to the Policing and Crime Act 2009.

(c) 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;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

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

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

4.—(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 19A and 73A of the Licensing Act 2003 (as inserted by section 32 of and Schedule 4 to the Policing and Crime Act 2009) provide for the Secretary of State to prescribe by order up to nine mandatory conditions applicable to relevant premises licences and club premises certificates.

Relevant premises licences and relevant club premises certificates are those authorising the supply of alcohol to the public in licensed premises or to members or guests of clubs in club premises.

The Schedule to the Order sets out the five mandatory conditions which apply to relevant premises licences and club premises certificates from the date of coming into force of the Order as provided in article 1. The conditions apply to all relevant premises licences authorising consumption of alcohol on the premises, and to all relevant club premises certificates, with the exception of the condition in paragraph 4 of the Schedule, requiring an age verification policy to be adopted, which applies in addition to licences for the supply of alcohol for consumption away from the premises.
