

RESPONSE FORM FOR LICENSING AUTHORITIES, ENFORCEMENT AGENCIES & HEALTH BODIES

Many adults enjoy drinking alcohol and it is up to individuals to choose whether, or how much, they drink. However alcohol is a key contributor to crime and disorder, which costs the country between £8 billion to £13 billion in a year. The Government's role is to get the balance right and make sure:

- those who sell alcohol do so responsibly; and
- everyone can make informed choices about the amount they drink.

We want to hear your views on a new code of practice to help us get the balance right between making sure that alcohol is sold responsibly while at the same time not negatively affecting the majority who do drink responsibly. The code covers three sections:

1. Mandatory licensing conditions and Food Safety Act requirements – conditions that would apply to all premises selling or supplying alcohol across England and Wales;

2. Discretionary local licensing conditions – allowing local licensing authorities to apply chosen conditions to two or more licensed premises when there is evidence of a link to alcohol-related disorder; and

3. Guidance – to make sure that the code of practice is implemented and enforced.

You will be asked to comment on the three sections covered by the code of practice. If your answers do not fit in the spaces provided, please continue on a separate sheet.

Read the full consultation document for more information at:
<http://www.homeoffice.gov.uk/about-us/haveyoursay/current-consultations/>

Please download this document and save it to your computer, fill in your responses in the tick boxes and text boxes provided and then e-mail it back to us at:

alcohol.consultation@homeoffice.gsi.gov.uk

Identifiers:

Where do you live? *(please tick one)*

North East

North West

South East

Yorkshire and
the Humber

West Midlands

East Midlands

East of England

South West

London

Wales

Scotland¹

Tell us your occupation or which organisation you represent:

If you are replying on behalf of an organisation or association, please can you detail how you have consulted your colleagues or members in preparing this response.

The Information Commissioner's Office. The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations and the Privacy and Electronic Communications Regulations. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken. The comments in this consultation are primarily from the data protection perspective.

The Data Protection Act 1998 is based around eight data protection principles that should form the basis of all processing of personal information.

¹ If you live in Scotland, please only answer question 6, as this is the only question which also applies to Scotland. The remainder of the questions are in relation to legislation which applies to England and Wales.

Section one, questions 1 – 5

The proposed mandatory licensing conditions and Food Safety Act requirements

1. Do you have any suggestions that will improve the proposed mandatory licensing conditions and requirements to reduce crime and disorder?

The ICO is concerned that the basis for mandatory requirement number 5 is unclear. As the discussion paper itself states “the level of underage alcohol sales purchased online or by mail order is uncertain”. What the consultation does not do is look at current safeguards in the process for purchasing alcohol, such as the use of a credit or debit card, and how this might in itself provide some ability to confirm that the individual is over the age of 18.

Buying alcohol online already involves the collection of certain information, such as credit or debit card information, that may already provide some indication as to whether or not the person making a purchase is over the age of 18. In many cases a bank or credit provider will not provide a debit or credit card to an individual under the age of 18 years, or provide a card with limited functionality for those under 18. In some cases, over 18s will also be issued a card with limited functionality, such as a card that you prepay, in order to make purchases. In those cases it is harder to rely on a credit card alone as an indication of the age of the purchaser.

The consultation does not address what seems to be a greater risk, that purchases will be made using a credit card which belongs to another individual. This could be due to those under the age of 18 using the card of a friend or relative who is over the age of 18, or identity fraud. What is lacking in online or mail order purchases is not a means to verify age but a means to verify the identity of the person using the card.

Collecting further information will not, in itself, provide any more robust means of verifying the age of an individual than is currently the case. If such a requirement does not work more effectively in preventing minors purchasing alcohol online, it is by definition disproportionate. Better use of systems currently in place to verify the identity of the card holder would be a much better way of ensuring alcohol was being sold to over 18s and ensuring that the person using the card was indeed the card holder.

2. Is the drafting of these mandatory licensing conditions explicit enough to capture the intended activities? If not, can you provide alternative wording that may be more effective?

The ICO is concerned that the wording of the condition to have age verification measures in place is neither realistic nor proportionate. As discussed above, the problem is not one of further legislation but of verification of the card holder’s identity. Collecting more information during an online purchase will not contribute significantly to verifying the age of the

purchaser but will involve greater collection of unnecessary personal information. Mandating the use of robust means of age verification in an online environment would set a condition that could not realistically be met. On the other hand, if it were to be accepted that a robust age verification system was unachievable and a less robust standard were to be accepted in practice, then the requirement is clearly of no more effective than current licensing laws.

If the Home Office is proposing to make age verification a mandatory condition it is incumbent on the Home Office to spell out how they believe realistic, effective and proportionate systems of age verification would work. If they cannot do so there is no basis for such a condition.

3. Are there any of the mandatory licensing conditions that you would not wish to be made mandatory for licensed premises? If so, why?

The use of age verification systems. As already stated this is a policy which is very difficult to implement, and will have minimal impact on purchases online as the bigger problem is verification of the identity of the cardholder. At the same time, despite this minimal effect it will inevitably require greater collection of personal information. It would be better to look at limit online purchases to transactions using cards that are issued to over 18s only and introduce measures or sanctions for those over 18s who allow minors to use their credit cards to make purchases of alcohol online.

4. Would you support the requirement for licensed premises to have to display unit and health information? Are there types of licensed premises that you feel should be exempt from these requirements? If so, which types and why?

This is not any area where it is appropriate for the Information Commissioner to comment.

5. Are there any types of licensed premises that you feel should be exempted from one or more of the mandatory conditions? If so, which types and why?

This is not any area where it is appropriate for the Information Commissioner to comment.

Considerations for Future Action, questions 6 – 7

6. Do you think that Weights and Measures legislation should continue to allow licence-holders to choose whether to offer either 25 ml or 35 ml single measures of certain spirits (i.e. gin, rum, vodka and whisky) or do you think that all on-trade premises should be required to offer only single spirit measures of 25 ml? Or do you think that all on-trade premises should be required to offer only single spirit measures of 35 ml? Please explain your choice.

This is not any area where it is appropriate for the Information Commissioner to comment.

7. Do you think that banning sales below the price level of excise duty plus VAT would be effective and proportionate in reducing irresponsible, harmful and/or binge drinking? Do you have evidence to support your view? What would be the potential costs and benefits of the impact on health, public safety, consumers, business and competition of introducing such a policy?

This is not any area where it is appropriate for the Information Commissioner to comment.

Section two, questions 8 – 16

The proposed discretionary local conditions:

8. Do you have any suggestions that will improve the impact of the proposed conditions in reducing nuisance and disorder in your area?

The introduction of CCTV (condition 11 and referenced in condition 10) can be seen as an interference with the privacy of the individuals. The proposal that CCTV can be imposed on two or more premises, rather than merely one set of premises, makes it possible for a single decision by a licensing authority to affect the privacy of very many individuals. It could also provide a more in-depth intrusion into the life of a single individual by capturing his/her movements between licensed premises throughout an evening. This is not to say that there are not situations in which the installation of CCTV on two or more premises is not acceptable, or even desirable. It is rather that the installation must be proportionate to the problems of antisocial behaviour or crime that CCTV is meant to address.

At present the ICO is dealing with a number of complaints from landlords and privacy groups about the mandating of CCTV inside single premises. The problem seems to be that some licensing authorities, or local police services, view installation of CCTV as a default requirement that should only be dropped where there are particular privacy concerns. The reality of the law is actually the opposite – the default position is that CCTV should not be used unless there is a justifiable reason for its installation, such as a history of crime or antisocial behaviour linked to particular premises. This is the position under current law and is made very clear in the Department of Media Culture and Sport guidance on CCTV as a condition for licensing single premises.

We welcome the provision for CCTV being worded so that it is only in operation during times most associated with alcohol related disorder, but again this should not make installation of CCTV a general rule

9. Is the drafting of these proposed local conditions explicit enough to achieve the intended impact? If not, can you provide alternative wording?

The ICO believes that the installation of CCTV as a condition of licensing should be based on risk of crime or antisocial behaviour. It is therefore surprising that the grounds for making CCTV a condition of licensing are not linked to the other discretionary conditions, such as conditions 3 (a risk review by the license holder), 8 (use of licensed door staff) and 9 (incident record).

It seems logical if the licensing conditions are linked to risk of crime and antisocial behaviour that other measures, such as the risk review and incident record being maintained by the licensee, should be used to inform any assessment of the need for CCTV installation in licensed premises. These are much less intrusive and more cost effective than CCTV and arguably are more effective at preventing crime and nuisance than CCTV.

CCTV should not be seen as a stand alone condition. It is part of a package of possible measures aimed at reducing the risk of crime and antisocial behaviour. CCTV should only be mandated if, after other mandatory and

discretionary conditions have been applied, the mandatory installation of CCTV remains a proportionate response to the risk of crime or antisocial behaviour.

10. Are there any of the proposed conditions that seem disproportionate or that you do not think licensing authorities should be able to use with groups of two or more premises?

It should be noted that the ICO supports the use of condition 11 where this is justified and will have a measurable impact on crime and nuisance behaviour. However, the implementation of CCTV installation conditions must be accompanied by awareness raising and training among licensing authorities and police services as to where responsibility lies for decision making on licensing conditions. Licensing authorities should not be a rubber stamp for police service recommendations and should require evidence of previous trouble or a likelihood of future trouble before imposing the installation of CCTV as a licensing requirement. This is in accordance with the wording of the provision in condition 11 and in line with UK data protection laws.

11. If limits are to be placed on supermarkets, convenience stores, etc. for discounting large volumes of alcohol, what levels do you consider should be set? Should it differ for different types of drinks (beer, wine, spirits etc)?

This is not any area where it is appropriate for the Information Commissioner to comment.

12. Training

How might a training requirement applied by licensing authorities to two or more premises work in practice? In particular: what should it contain; how should it be enforced; and should different schemes be available to the on-trade, off-trade and clubs?

This is not any area where it is appropriate for the Information Commissioner to comment.

13. Seating

What are the appropriate levels of seating that should be imposed on 'high volume vertical drinking establishments' in order to reduce the risk of nuisance and disorder?

This is not any area where it is appropriate for the Information Commissioner to comment.

14. Background music

Would a restriction on the level of background music contribute to a decrease in nuisance and disorder? If so, how might it be enforced?

This is not any area where it is appropriate for the Information Commissioner to comment.

15. Harassment/intimidation in premises

What more can be done to protect people from harassment and intimidation in and around licensed premises?

This is not any area where it is appropriate for the Information Commissioner to comment.

16. Door Staff

Do you think that there should be a discretionary local condition to require groups of premises to have door staff in operation during times associated with nuisance and disorder?

This is not any area where it is appropriate for the Information Commissioner to comment.

Section Three, questions 17 – 19

Guidance:

17. Do you think that the enforcement process that we have suggested is appropriate? Can you suggest an alternative?

This is not any area where it is appropriate for the Information Commissioner to comment.

18. Do you think that the appeals process we have suggested is appropriate? Can you suggest an alternative?

This is not any area where it is appropriate for the Information Commissioner to comment.

19. How widely do you think these powers will be used and why?

The ICO's experience of the use of CCTV would lead us to expect this power to be used very widely and we would be concerned that the provisions of condition 11 would be used inappropriately or disproportionately. In addition, many of the licensing policies developed by licensing authorities present the installation of CCTV as a model condition for obtaining a license to sell alcohol, which runs contrary to consideration of CCTV on a case by case basis.

If there is anything else you would like to tell us, including responses to the call for evidence on page 55, or any questions you would like to ask, please include here:

Thank you for your time