



# Licensing Committee

**Date:** THURSDAY, 17 APRIL 2014

**Time:** 10.00 AM

**Venue:** COMMITTEE ROOM 4 -  
CIVIC CENTRE, HIGH  
STREET, UXBRIDGE UB8  
1UW

**Meeting  
Details:** Members of the Public and  
Press are welcome to attend  
this meeting

## **Councillors on the Committee:**

Dominic Gilham (Chairman)  
David Yarrow (Vice-Chairman)  
Lynne Allen (Labour Lead)  
Mike Bull  
Josephine Barrett  
Judy Kelly  
Peter Kemp  
Carol Melvin  
Brian Stead  
Janet Gardner

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# Agenda

- 1 Apologies for Absence
- 2 Declarations of Interest in matters coming before this meeting
- 3 To Agree the Minutes of the meeting held on 14 January 2014 Page 1 - 4
- 4 To confirm that items marked in Part 1 will be considered in Public

## **Reports - Part 1 - Members, Press and Public**

- 5 Amendment to Licensing Committee Delegations Page 5 - 6
- 6 Personal Licences: Government response to the Consultation on 'Personal Licences; Enabling Targeted Local Alternatives' Page 7 - 21
- 7 Home Office Alcohol Strategy Page 23 - 52
- 8 Classification of Films in Cinemas Page 53 - 55

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**Minutes**

**LICENSING COMMITTEE**

**14 January 2014**

**Meeting held at Committee Room 4 - Civic Centre,  
High Street, Uxbridge UB8 1UW**

	<p><b>Committee Members Present:</b> Councillors Dominic Gilham (Chairman) David Yarrow (Vice-Chairman) Mike Bull Josephine Barrett Judy Kelly Brian Stead Lynne Allen (Labour Lead) Janet Gardner</p> <p><b>Also Present:</b> Sgt Ian Wares</p> <p><b>LBH Officers Present:</b> Stephanie Waterford, Licensing Service Manager Tim Brown, Legal Advisor Danielle Watson, Democratic Services Officer</p>
8.	<p><b>APOLOGIES FOR ABSENCE</b> (<i>Agenda Item 1</i>)</p> <p>Apologies for absence were received from Councillor Carol Melvin and Peter Kemp.</p>
9.	<p><b>DECLARATIONS OF INTEREST IN MATTERS COMING BEFORE THIS MEETING</b> (<i>Agenda Item 2</i>)</p> <p>There were no declarations of interest notified.</p>
10.	<p><b>TO AGREE THE MINUTES OF THE MEETING HELD ON 27 SEPTEMBER 2013</b> (<i>Agenda Item 3</i>)</p> <p>The minutes of the meeting held on 27 September 2013 were agreed as a correct record.</p>
11.	<p><b>SCRAP METAL DEALERS UPDATE</b> (<i>Agenda Item 4</i>)</p> <p>Stephanie Waterford, Licensing Service Manager, introduced the officer's report and updated Members on the Scrap Metal Dealers Act 2013 which came into effect on 1 December 2013.</p> <p>Ms Waterford informed the Committee that over 50 applications had been processed in the past two months. It was further explained that the legislation had been brought into effect to combat metal theft and the crime associated with it. Ms Waterford referred to Appendix 1 and 2 of the officer's report which detailed the information available to new applicants and the hearing protocol.</p>

The Chairman highlighted to the Committee that on 7 November 2013 the information went to Full Council who gave power to Cabinet to agree the guidance documentation. Cabinet subsequently delegated any further changes that needed to be made or agreed by to the Licensing Committee.

Members questioned whether details of the applicant's criminal history would be provided to ensure the applicant was suitable to have a licence. Ms Waterford informed Members that a DBS certificate would highlight any relevant offences. Sgt Ian Wares informed the Committee that the conviction would have to be related to scrap metal for the application to be refused.

Members discussed both the collector licence and the site licences. Ms Waterford referred to page 9 of the officer's report which detailed both types of licenses. Ms Waterford explained that a dealer could not hold both a site and collectors licence from the same authority. The Chairman suggested that the Scrap Metal Licenses should be given a Council seal like other Licenses. Members were keen for monitoring year on year cases to compare the number of convictions prior to the Act coming into force.

Ms Waterford highlighted that under the new rules and regulations the Scrap Metal Dealer would have to record transactions which would include the customers name, address and possibly bank details. Members noted that the Scrap Metal Dealer would have to keep detailed records of these transactions. Members were concerned that residents may not want to give their details out. Members noted that residents would still be able to take their own scrap metal to a site.

Ms Waterford and Sgt Wares informed the Committee that there were long established Scrap Metal Dealers in the Borough. Ms Waterford also informed the Members that the licenses would last for 3 years.

The Chairman highlighted that the schedule of fees was incorrect and the columns should be the other way around. The Chairman also requested that any outstanding payments relating to scrap metal be received prior to a hearing taking place.

**Resolved – That the Committee noted the information and agreed and adopted the hearing protocol.**

12. **DEREGULATION OF COMMUNITY FILM EXHIBITIONS** (*Agenda Item 5*)

Stephanie Waterford, Licensing Service Manager, introduced the officer's report and informed Members that the Government recently released their response to the consultation launched by the Department for Culture, Media & Sport (DCM) in relation to the deregulatory changes to entertainment licensing for community film exhibition.

Members questioned whether the proposals would affect Council owned sites such as the Compass Theatre as they held weekly film days/nights. Ms Waterford explained that the proposals would affect community settings such as centres, schools and churches. Ms Waterford informed Members that the Compass Theatre would not fall into the proposed exemption as it was classed as a cinema.

Members also questioned the maximum number of people that could watch a film in a community setting which was up to 500 people. Members thought this number was too high.

Members questioned how wide the consultation was and who had responded to the consultation. Ms Waterford informed Members that the Licensing Service was made aware of the consultation via the Institute of Licensing website.

Ms Waterford explained that some films do not have a British Board of Film Classification (BBFC); the local authority would be able to apply a rating to the film. The Chairman highlighted that page 48 of the agenda indicated that a non classified film would not fall into the exemption. Ms Waterford felt that it was highly unlikely that the Committee would have to classify a film in the future. Members were keen to know if Hillingdon Council had ever classified a film and if so when.

**Resolved – That the Committee noted the information.**

13. **APPLICATION CONSULTATION PROCEDURE** (*Agenda Item 6*)

The Chairman informed the Committee that he had requested that this item was brought to their attention. The Chairman felt that it was not appropriate for Committee Members to be copied in officer's emails when officers were making comments on applications. The Chairman was not happy for this process to continue and did not want anyone to think decisions were predetermined, as this was not the case.

The Chairman requested that Licensing Members be removed from this email stream. Members requested that any comments made by officers or by members of the public be fed in to a report to ensure Members were aware of any concerns if any. Members agreed that this was a suitable way forward. Ms Waterford highlighted reports were only produced if an application had objections.

The Chairman also highlighted concern about the quality of applications brought before Committee. Members agreed that the applications should adopt a similar style to planning applications in which all the information and plans are easier to understand.

Ms Waterford informed the Committee that she had raised the issue with the Application Processing Team and the quality of applications should improve as a result of the concerns raised. Members agreed and stated that they should only be presented with facts and objections. Members also requested that the facts were clearly stated when petitions were received for or against an application.

Ms Waterford informed the Committee that the Anti-Social Behaviour Investigation Team was consulted on every application and that other concerns raised, including those from members of the public, were tabled in reports under the 4 Licensing Objectives.

Ms Waterford informed the Committee that the Environmental Protection Unit (EPU) were good at providing comment on applications. The Chairman requested that the Anti-Social Behaviour Investigation Team provide comment even if they have no concerns regarding applications.

Ms Waterford highlighted a briefing note circulated to Members at the beginning of the meeting which detailed the Council's response to the consultation concerning changes to the way Personal Alcohol Licences were issued. Members noted the information and would forward any questions to the Licensing Service.

**Resolved - That the committee instructed Officers on the best way to keep Members informed of current applications.**

	The meeting, which commenced at 10.00 am, closed at 10.47 am.

These are the minutes of the above meeting. For more information on any of the resolutions please contact Danielle Watson on Democratic Services Officer - 01895 277488. Circulation of these minutes is to Councillors, Officers, the Press and Members of the Public.



## AMENDMENT TO LICENSING COMMITTEE DELEGATIONS

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Stephanie Waterford, Residents Services
<b>Papers with report</b>	None
<b>Ward(s) affected</b>	All

### SUMMARY

To amend the Licensing Committee delegation in light of the amendments to the Licensing Act 2003 made under the Police Reform and Social Responsibility Act 2011.

### RECOMMENDATION

**That the Licensing Committee approve the proposed delegation.**

### INFORMATION

Following the implementation of the Police Reform and Social Responsibility Act 2011, the Licensing Authority delegated the power to suspend licences for non-payment of annual fees to the Licensing Sub-Committees.

It is now proposed to delegate this power to Officers in order to free up the Licensing Sub-Committees to deal with other matters.

Consequently, the scheme of delegations must be amended to reflect those changes.

Power	Proposed Delegation
Suspension of Licences for failure to pay Annual Fees under the Licensing Act 2003	Deputy Chief Executive & Corporate Director of Residents Services

### FINANCIAL IMPLICATIONS

None.

### LEGAL IMPLICATIONS

The Police Reform & Social Responsibility Act 2011 amended the Licensing Act 2003 and introduced new powers for licensing authorities. Section 10 of the Licensing Act 2003 (as amended), states that a licensing committee may sub delegate its licensing functions to a sub-committee or in certain cases, to officers. The functions outlined in this report may lawfully be sub delegated in the manner proposed.

## **BACKGROUND PAPERS**

Licensing Act 2003

Police Reform & Social Responsibility Act 2011

## PERSONAL LICENCES: GOVERNMENT RESPONSE TO THE CONSULTATION ON 'PERSONAL LICENCES; ENABLING TARGETED LOCAL ALTERNATIVES'

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Stephanie Waterford, Residents Services
<b>Papers with report</b>	Appendix 1 – Home Office Response document
<b>Ward(s) affected</b>	All

### SUMMARY

To inform the Licensing Committee of the Government's response to the consultation to deregulate personal licences.

### RECOMMENDATION

**That the Licensing Committee note the information.**

### INFORMATION

At the meeting of the Licensing Committee held in September 2013, Members were advised of the Government's consultation on the 'Personal Licences: Enabling Targeted Local Alternatives'.

The overall proposal was to abolish personal licences and enable Local Authorities to implement alternatives to the personal licence system, by imposing further conditions and training requirements where necessary.

The consultation ended on 7<sup>th</sup> November 2013 and the Home Office has now published its response.

In summary, the Government received little support to the proposals and has decided not to proceed with the plan to abolish personal licences.

A full copy of the response is attached at Appendix 1.

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Home Office

## **Personal Alcohol Licences: Enabling Targeted, Local Alternatives**

### **Government response to the consultation**

24 March 2014

# Government response

## Introduction

1.1. The *Personal Alcohol Licences: Enabling Targeted, Local Alternatives* consultation (the 'consultation') ran from 12 September to 7 November. This explained that the requirement to obtain a personal licence gives rise to costs in respect of application fees, training and criminal records checks. It is a requirement for every Designated Premises Supervisor (DPS) to obtain a personal licence and the consultation document sought views on a proposal to replace these with a targeted alternative scheme.

## Background

2.1. The Government consulted previously as part of its wider Alcohol Strategy consultation<sup>1</sup> on a proposal to abolish the requirement to renew a personal licence every ten years. The Government is implementing this measure via the Deregulation Bill which is now before Parliament. During the Alcohol Strategy consultation, feedback from the public and partners suggested that there was some support for abolishing personal licences in their entirety as a deregulation measure to free up the licensed trade. The Government published the consultation document with the proposal to abolish the system and enable local alternatives instead.

2.2. The premise of the consultation proposal was that licensing authorities could be enabled to develop their own more targeted alternatives to the personal licences system, imposing training conditions on those premises where it was appropriate to do so, but removing burdens where such conditions were not needed. The proposal envisaged retaining national accredited training courses so that licensing authorities had a common standard to refer to when imposing conditions. During the public consultation period, two technical groups were held with representatives of the trade, police, licensing authorities, training providers, licensing specialists and other interested parties.

## Summary of responses

2.3. There were 352 responses<sup>2</sup> received during the consultation period. These were largely against the proposal. Percentages relate to the total number of responses which provided clear answers to questions one to six of the consultation: unanswered or unquantifiable responses have been excluded from the percentage totals<sup>3</sup>. A full breakdown of responses is contained in pages 4-6 and, in addition, given that one of the key aims of the proposal was to assist the licensed trade, a summary of responses from this sector is provided in Annex A. An analysis of the overall responses revealed:

- little overall support for the proposal.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157755/alcohol-consultation-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157755/alcohol-consultation-document.pdf)

<sup>2</sup> These consisted of 249 on-line replies, 88 responses by email and 15 in hard copy.

<sup>3</sup> Annex B outlines the analysis process.

- 90% (284 respondents) thought that the proposal would undermine the licensing objectives<sup>4</sup> (compared with 94% (117 respondents) of trade respondents).
- 72% (225 respondents) did not think that the proposal would reduce burdens in terms of time and or money on business (compared with 90% (111 respondents) of the trade).
- 78% (237 respondents) thought that 90% or more of all premises would require training conditions (compared with 77% (89 respondents) of the trade).

2.4. Respondents from the trade were broadly concerned that if the proposal was implemented it would cause inconsistency between licensing authority areas in terms of applying training conditions on premises. While it was acknowledged by many that the system of personal licences was not perfect, many thought it provided a level playing field for premises, ensured consistency between areas and set a benchmark of training.

2.5. There was some support among a number of licensing authorities for the premise of the proposal as it would provide greater localisation. However, more thought that there would be additional burdens through having to impose training conditions on premises. A proportion thought that the personal licence qualification provided some basic training.

2.6. Respondents from the police were generally opposed to the proposal and indicated their preference for the system of personal licences to be kept or even tightened up and made more rigorous. They had concerns about the lack of consistency in training which could arise under the proposal and felt that the current system at least ensured a minimum standard of training.

## Conclusion

2.7. The Government has listened to the views received in response to the consultation and in discussion with partners has decided not to proceed with the proposal to abolish the system of personal licences. During the consultation on deregulation and discussions with partners, a number of suggestions were made to further develop and tighten the existing system, rather than to deregulate it. A summary of those points is included in the 'Analysis of the supporting evidence' section of this document. The Government welcomed these suggestions in the context of its consultation on proposed deregulation. Reforms to the licensing regime must be proportionate and cost effective. The Government has no immediate plans to take these forward at this time. However, it will maintain an on-going, open dialogue with its partners and ensure that any proposed changes to alcohol licensing continue to strike a balance between removing unnecessary bureaucracy for responsible businesses but maintaining important safeguards.

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<sup>4</sup> These are: the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

## Analysis of responses to consultation questions 1 to 6

3.1 The consultation document asked six closed questions. Respondents were asked to indicate their replies to questions one to six by highlighting the most relevant options. The analysis of questions seven and eight is explained in pages 7-9 of this document.

3.2 Percentages for questions one to six below are based on the total number of people who clearly answered the questions. **Unanswered or unquantifiable responses have been excluded from the percentage totals.**

3.3 For further information about the analysis of data, please see Annex B.

### Question 1: Do you think the Government's proposal would reduce burdens, in terms of time and/or money, on business, including small and medium enterprises?

Response options	Response Percentage	Response Total	
Yes	19%	58	
No	72%	225	
Don't know	9%	28	
		Answered	311
		Unanswered/ Unquantifiable	41

### Question 2: Do you think this proposal would undermine the licensing objectives? The four licensing objectives are: public safety; preventing crime and disorder; preventing public nuisance; and protecting children from harm.

Response options	Response Percentage	Response Total	
Yes	90%	284	
No	7%	22	
Don't know	3%	10	
		Answered	315
		Unanswered/ Unquantifiable	37



**Question 3: Do you think nationally accredited training courses for those authorising alcohol sales are necessary to help licensing authorities promote the licensing objectives?**

Response options	Response Percentage	Response Total	
Yes	96%	305	
No	4%	12	
Don't know	0%	0	
		Answered	317
		Unanswered/ Unquantifiable	35

**Question 4: Do you think a statutory list of relevant offences, such as theft or handling stolen goods, is necessary to help licensing authorities promote the licensing objectives?**

Response options	Response Percentage	Response Total	
Yes	87%	269	
No	9%	28	
Don't know	4%	13	
Unclear	3%	8	
		Answered	310
		Unanswered/ Unquantifiable	42

**Question 5: For what proportion of premises in your area do you think conditions requiring nationally accredited training would be appropriate?**

Response options	Response Percentage	Response Total
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<10%	6%	18	
25%	5%	16	
50%	4%	13	
75%	6%	18	
>90%	78%	237	
D/K	0%	1	
		Answered	303
		Unanswered/ Unquantifiable	49

**Question 6: For what proportion of premises in your area do you think conditions requiring criminal records declarations for future Designated Premises Supervisors would be appropriate?**

Response options	Response Percentage	Response Total	
<10%	8%	25	
25%	3%	10	
50%	4%	12	
75%	4%	12	
>90%	80%	243	
D/K	1%	2	
		Answered	304
		Unanswered/ Unquantifiable	48

**Analysis of the supporting evidence provided by respondents (Questions 7 and 8)**

4.1 Question seven asked for supporting evidence for the answers given by respondents to questions one to six and question eight asked for any other points which people thought the Government should consider. The detail provided by many respondents for questions seven and eight was not always specific to the question asked. For example, quite a number of responses to question eight actually contained supporting evidence to the answers for questions one to six. We analysed the detail of the supporting responses ('qualitative data') by looking for common views and themes. In the analysis of the data below, we have also used quotations from responses to provide a flavour of the views expressed.

## General observations

4.2 In general, there was little support for the proposal in the consultation document with many respondents stating that the personal licence was seen as a source of pride and an indication of professionalism for holders and those involved in the industry. As one licensing authority officer stated, a licence or qualification "helps people secure employment". A number of respondents were also concerned about the potential effects of the proposal. Overall, the two main concerns expressed were that the abolition of personal licences would remove a baseline level of training for those responsible for approving alcohol sales, and that the proposal would ultimately lead to greater burdens.

4.3 In regard to the current training which personal licence holders are required to complete, a common concern reported was that the proposal would lead to a variety of different local requirements and therefore uncertainty, whereas it was suggested that the existing training required by personal licence holders ensured that those responsible for authorising alcohol sales had been trained to a recognised standard.

4.4 Many thought that the removal of mandatory training for Designated Premises Supervisors, proposed in the consultation document, would actually result in greater burdens to the trade (for example operators, with premises in a number of areas, having to impose their own training), and lead to burdens on the police and licensing authorities who would have to review premises licences in order to place training conditions on them, where they thought it appropriate for the promotion of the licensing objectives. The paragraphs below provide further observations on questions one to six.

**4.5 Do you think the Government's proposal would reduce burdens, in terms of time and/or money, on business, including small and medium enterprises?** It was suggested in the technical groups that the proposal was not deregulatory and that it would result in many licensing authorities requiring Designated Premises Supervisors to undertake greater training than that currently required for personal licence holders. A number of licensing authorities and police respondents suggested that while the proposal would in their view lead to savings for business, it would nevertheless result in burdens on licensing authorities and police. Some trade representatives also made this observation with one remarking in a technical group that the proposal, "would not remove red tape, but it will impose burdens on the police and licensing authorities". A number of police were concerned about the consequential effect of the proposal, with one police representative stating that, "the burden of transferring conditions on existing licences...is through reviews."

**4.6 Do you think this proposal would undermine the licensing objectives? The four licensing objectives are: public safety; preventing crime and disorder; preventing public nuisance; and protecting children from harm.** Many respondents expressed the view that given the likelihood that the proposal would result in different training requirements from area to area, that it would undermine the licensing objectives. For example, one trade representative stated that such a situation would, "create a patchwork quilt of different licensing conditions that would be very difficult to enforce". This view was reiterated and expanded upon by others,

including licensing authority representatives who thought that the lack of consistency in training requirements could result in unscrupulous operators disregarding the licensing objectives. There was also concern that the abolition of mandatory training could result in unqualified people selling alcohol, with a number of respondents suggesting that this could result in a greater number of incidents in which alcohol was sold to children. As one trade representative commented in a technical group, the awareness of “underage sales is a very important part of personal licence training” and that without the training the possibility of a person committing the offence would rise.

#### **4.7 Do you think nationally accredited training courses for those authorising alcohol sales are necessary to help licensing authorities promote the licensing objectives?**

Respondents were in favour of nationally accredited training courses. One police force summed this up by stating that the alternative to nationally accredited training courses would be, “an unregulated system of varied training courses with no standard on the quality of courses being delivered”. While some felt that there were a number of personal licence holders whose knowledge of the licensing objectives could be improved, a number of licensing authority representatives and police felt that the course provided holders with basic knowledge. For example, one licensing officer attending a technical group thought that the personal licence course helped raise awareness of the licensing objectives. The trade were also concerned that the proposal could result in difficulties for large operators, particularly in respect of those who provided a general package of training for their staff as inconsistent training requirements between areas would require these operators to tailor their training to accommodate local differences.

#### **4.8 Do you think a statutory list of relevant offences, such as theft or handling stolen goods, is necessary to help licensing authorities promote the licensing objectives?**

There was general support for a list of statutory offences. However, there was some difference of opinion about the breadth of offences which should be included. In general many concurred with the view put forward by one licensing authority respondent that, “...the list brings clarity for all sides”. There was also a feeling among a small number of respondents that the statutory list should be amended. A few respondents proposed that some discretion should be given to licensing authorities as to the whether the commission of a relevant offence should prevent an applicant for the position of a Designated Premises Supervisor from holding the position. For example a trade representative stated that their organisation, “agree[d] with the need...of a statutory list of offences...” but added that some “offences...have no bearing on the position of a personal licence holder.” At the other end of the scale, some police and licensing authorities respondents were in favour of broadening the list of relevant offences, with one licensing authority representative suggesting that, “all offences should be taken into account and [it should be] for licensing authorities to decide if they are relevant.”

#### **4.9 For what proportion of premises in your area do you think conditions requiring nationally accredited training would be appropriate?**

The intention of the proposal was to enable local areas to adopt a more targeted approach so that well run premises would not have unnecessary training conditions imposed on them. However, the majority of responses indicated that most premises would require training conditions and expressed concern that this would lead to burdens on licensing authorities who would have the responsibility of having to impose them. Additionally, a number of trade representatives, including two major pub organisations, stated in technical group discussions that they preferred their staff to be trained anyway so that they were aware of their responsibilities under the Licensing Act 2003. A number of respondents, including those from large trade bodies, the police and licensing authorities, feared that the proposal would lead to different conditions being placed on premises resulting in inconsistencies in training between different areas. There were contrary views from a small number of respondents. For example, one licensing authority thought that it would only be appropriate to impose training conditions on a small percentage of premises as many in their

area were well run and that it would only be appropriate to impose conditions in limited circumstances.

**4.10 For what proportion of premises in your area do you think conditions requiring criminal records declarations for future Designated Premises Supervisors would be appropriate?** The proposal envisaged Designated Premises Supervisor (DPS) applicants providing a Disclosure and Barring Service (DBS) declaration. A number of respondents, including those from the trade, stated that they would prefer DPS applicants to obtain a full DBS check (i.e. a check on the applicant's criminal records history including information about cautions, warnings, reprimands and convictions, both spent and unspent). Conversely, a very small number thought that sufficient checks could be made on applicants without the need for requiring a DBS declaration or check. One licensing authority, for example, stated that given the PNC checks already made on applicants in their area by local police, a DBS "declaration is unnecessary".

## Other suggestions

4.11 Question eight asked respondents if there were any other points which the Government should consider. Many respondents were forthcoming with suggestions proposing that the system should be tightened up further rather than deregulated.

4.12 Some of the more commonly mentioned suggestions included:

- Ensuring that a trained personal licence holder was on the premises at all times;
- The introduction of tiered training accreditation schemes for those involved in the sale of alcohol, such as a bronze, silver and gold standard;
- The introduction of a personal licence holder national database;
- Introducing powers to enable licensing authorities to remove Personal Licences from holders; and
- Greater action by the courts ensuring that they inform licensing authorities when a personal licence holder has committed a relevant offence.

## Next steps

4.13 The Government is grateful for these and all comments made to the consultation document. These have been key in informing its decision making. In regard to the suggestions made to tightening up the system of personal licences, consideration must be given to the proportionality of implementing changes. There are no plans to take these forward at this stage for the reasons explained at paragraph 2.7 above.

## Annex A – Trade responses

**Question 1: Do you think the Government’s proposal would reduce burdens, in terms of time and/or money, on business, including small and medium enterprises?**

Response options	Response Percentage	Response Total	
Yes	6%	7	
No	90%	111	
D/K	4%	5	
		Answered	123
		Unanswered/ Unquantifiable	14

**Question 2: Do you think this proposal would undermine the licensing objectives? The four licensing objectives are: public safety; preventing crime and disorder; preventing public nuisance; and protecting children from harm.**

Response options	Response Percentage	Response Total	
Yes	94%	117	
No	2%	3	
Don't know	3%	4	
		Answered	124
		Unanswered/ Unquantifiable	13

**Question 3: Do you think nationally accredited training courses for those authorising alcohol sales are necessary to help licensing authorities promote the licensing objectives?**

Response options	Response Percentage	Response Total
Yes	93%	115

No	7%	9	
Don't know	0%	0	
		Answered	124
		Unanswered/ Unquantifiable	13

**Question 4: Do you think a statutory list of relevant offences, such as theft or handling stolen goods, is necessary to help licensing authorities promote the licensing objectives?**

Response options	Response Percentage	Response Total	
Yes	82%	100	
No	11%	14	
Don't know	7%	8	
		Answered	122
		Unanswered/ Unquantifiable	15

**Question 5: For what proportion of premises in your area do you think conditions requiring nationally accredited training would be appropriate?**

Response options	Response Percentage	Response Total	
<10%	10%	11	
25%	4%	5	
50%	4%	5	
75%	4%	5	
>90%	77%	89	
D/K	0%	0	
		Answered	115

		Unanswered/ Unquantifiable	22
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**Question 6: For what proportion of premises in your area do you think conditions requiring criminal records declarations for future Designated Premises Supervisors would be appropriate?**

Response options	Response Percentage	Response Total	
<10%	9%	10	
25%	3%	4	
50%	6%	7	
75%	4%	5	
>90%	77%	89	
D/K	0%	0	
		Answered	115
		Unanswered/ Unquantifiable	22



## Annex B – The consultation analysis process

- 1) A total of 352 consultation responses were received. These consisted of on-line responses (249) to a proforma, replies by email (88) and hard copy (15). All on-line responses, letters and emails referring to the consultation proposal and received during the consultation period were analysed and written up by Home Office officials.
- 2) Data from responses to the closed (quantitative) questions in the consultation, (questions one to six), which invited the replies: 'yes', 'no', or 'don't know' were recorded and analysed. All responses to questions seven and eight ('qualitative data') were analysed. In cases where a person left an answer to one of the first six questions blank, these responses have been categorised as unanswered/unquantifiable.
- 3) Where responses were unclear because they did not clearly match an answer provided on the proforma (i.e., a yes, no, or don't know response), the responses were categorised as unclear or unquantifiable, whichever was the most appropriate. Where respondents had not clearly indicated their answers to the first six questions (i.e. where they did not clearly provide a response which matched an answer in the proforma), no attempt was made to categorise or interpret their responses. However, their answers to questions seven and eight were analysed.
- 4) All responses to question seven (which asked for supporting evidence for questions one to six) and question eight (other points for the Government to consider) were analysed and coded against frequently occurring views and themes. Where respondents commented on aspects of the policy which were outside the remit of the consultation, these points were noted but have not been included in this response.
- 5) Question seven asked for supporting evidence for the answers given by respondents to questions one to six and question eight asked for any other points which people thought the Government should consider. The detail provided by many respondents for questions seven and eight was not always specific to the question asked. For example, quite a number of responses to question eight actually contained supporting evidence to the answers for questions one to six. Officials analysed the detail provided in questions seven and eight ('qualitative data') by looking for common views and themes. Some quotations have been used as illustrative examples.
- 6) Feedback raised by attendees at the technical groups was also considered and has helped to inform this consultation.
- 7) There were a total of 137 trade responses among the 352 respondents. These included individuals involved in the licensed trade/club premises, small or medium sized enterprises, holders of personal licences and large businesses involved in licensed premises. This was approximately 40 per cent of respondents.
- 8) Percentages have been rounded up to the nearest whole number and therefore totals may not always add up to 100 per cent.
- 9) Percentages are based on the total number of responses to questions and do not include unanswered or unquantifiable (including unclear) answers.

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## HOME OFFICE ALCOHOL STRATEGY

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Charlene Ellis, Residents Services
<b>Papers with report</b>	<b>Appendix 1:</b> Home Office Guidance on banning the sale of alcohol below the cost of duty plus VAT <b>Appendix 2:</b> (Draft) Statutory Instrument The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014
<b>Ward(s) affected</b>	All

### SUMMARY

To inform the Committee of forthcoming statutory changes, in relation to the Home Office Alcohol Strategy and in respect of modifications to the mandatory code of practice and subsequent licence conditions applicable to all alcohol licensed premises.

### RECOMMENDATION

**That the Licensing Committee note the information.**

### INFORMATION

Following discussions at the Licensing Committee meeting held on 15<sup>th</sup> January 2013 and subsequent response to the Home Office Alcohol Strategy consultation by the Licensing Authority, a statutory instrument has been drafted setting out control measures and revised mandatory conditions for all alcohol licensed premises.

To recap, on 23 March 2012 the Government launched its Alcohol Strategy with the intention to ban 'below cost' selling of alcohol by setting a minimum unit price. It targeted primarily, harmful and hazardous consumers who tend to show a preference for the cheapest alcohol products, whilst at the same time not disproportionately affecting responsible drinkers or particular social groups.

The objective was and is to radically reshape the approach to alcohol and decrease the number of people drinking to excess, by cracking down on an evolving 'binge drinking' culture, reducing alcohol fuelled violence and disorder and slashing the number of people drinking to damaging levels; which ultimately impacts on the number of hospital admissions and subsequent alcohol related deaths.

The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty for a product plus value added tax payable on the duty element of the product price. Guidance produced by the Home Office, attached as Appendix 1, provides comprehensive information relating to the implementation of these changes and methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price").

The guidance content, subject to parliamentary approval, is due to come into force around mid May.

Upon commencement, the ban and subsequent licence conditions will prevent businesses from selling alcohol at heavily discounted prices and will see additional mandatory conditions added to every on and off licensed premise. The new mandatory conditions are set out in the draft statutory instrument listed as Appendix 2.

## **IMPLEMENTATION**

Implementation of the ban and ensuring responsibility for compliance of the mandatory conditions, setting out the permitted price at each premises will be conducted by the named 'relevant person', defined as the premises licence holder, designated premises supervisor or personal licence holder. In relation to club premises certificates, a member or officer of a club who is present and able to prevent a supply of alcohol can be seen as the relevant responsible person(s). It will be the licence holders' responsibility for ensuring that all relevant persons responsible for amending prices on the premises are made aware of the legal requirement to sell alcohol at, or above the cost of duty plus VAT on that premises.

In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a "relevant person" under the mandatory condition.

## **ENFORCEMENT**

Responsibility for enforcement will be led by local authorities including Licensing Authorities, Trading Standards and the Police. Recommendations put forward, suggest that enforcement officers only check the prices of heavily discounted alcohol products, as these products are most likely to pose a risk of breaching the new mandatory conditions. Expectations are not that enforcement officers should check the price of all alcohol products on a premise, unless they feel it is appropriate to do so.

Where it is felt necessary, enforcing officers can request a copy of the premises pricing lists for analysis to compare against the duty plus VAT permitted prices, as listed within Appendix 1 Annex C.

## **FINANCIAL IMPLICATIONS**

None.

## **LEGAL IMPLICATIONS**

The new mandatory conditions have been inserted into the Licensing Act 2003 ("the Act") and interpretation and enforcement of the provision must be consistent with the Council's responsibilities under the Act. In implementation of the new mandatory conditions, the Council must ensure that it has procedures for enforcement and monitoring that comply with the legislation and specific guidance issued. This must also comply with the Council's existing Statement of Licensing Policy and be consistent with the Secretary of State's Guidance under section 182 of the Act.

As with other breaches of licence conditions, where premises are found to be selling alcohol for less than the 'permitted price', the relevant person will commit an offence under section 136 of the Act. It is a defence if the person's act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence. A breach of this mandatory condition may also result in a review of the premises licence.

## **BACKGROUND DOCUMENTS**

Home Office Alcohol Strategy

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Home Office

**Guidance on banning the sale of alcohol  
below the cost of duty plus VAT**  
For suppliers of alcohol and enforcement  
authorities in England and Wales

February 2014

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# Introduction

## Overview: banning the sale of alcohol below the cost of duty plus VAT

On 23 March 2012 the Government launched its Alcohol Strategy, which aims to radically reshape the approach to alcohol and reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out the Government's intention to ban below cost selling to tackle the availability of below cost alcohol.

The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty ('duty') for a product plus value added tax ('VAT') payable on the duty element of the product price.

This guidance provides a single point of reference for suppliers of alcohol and local authorities in England and Wales for banning the sale of alcohol below the cost of duty plus VAT.

This guidance document provides comprehensive information regarding implementation of the relevant legislation, methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price") and effective enforcement of the ban. The content of this guidance relates to proposals to be introduced as draft legislation in early 2014. Therefore the content is subject to parliamentary approval of legislation; if approval is obtained, the legislation will come into force in April 2014.

The ban will prevent businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

## Who the ban applies to

The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

# Section 1: Implementing the ban

## Responsibility for ensuring compliance of the mandatory condition at premises

Responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a “relevant person”. We have defined “relevant person” (in relation to premises licences) as the premises licence holder, designated premises supervisor or personal licence holder and (in relation to club premises certificates) a member or officer of a club who is present and able to prevent a supply of alcohol.

The premises licence holder, designated premises supervisor or personal licence holder is responsible for ensuring that any person (if different from the licence holder) responsible for amending prices on the premises is aware of the legal requirement to sell alcohol at or above the cost of duty plus VAT on that premises.

In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a “relevant person” under the mandatory condition.

## How to calculate the permitted price of duty plus VAT

The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and then applying the current rate of VAT to this amount.

Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT. The three categories are:

- 1) Beer
- 2) Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22% ABV)
- 3) Wine, made-wine and cider (not exceeding 22% ABV)

We use the following calculations to determine the permitted price for each product:

### **Beer permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

### **Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22%) permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

### **Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x duty rate

(Note: duty rates for beer, wine, made-wine and cider are given in pounds per hectolitre. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per litre, which is an identical figure. Duty rates for spirits and other products over 22% ABV are given in pounds per litre of pure alcohol. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per centilitre (i.e. 10ml) of pure alcohol, which is also an identical figure.)

Where a retailer wishes to sell drinks that are mixed, for example, in a cocktail, they should calculate the permitted price using the alcohol contained in the drink.

Where permitted prices are not a whole number of pennies, the price should be rounded up to the nearest whole number.

The duty rates are set out in [Annex A](#).

## Worked examples:

### 440ml can of 4% ABV lager

$$\begin{aligned}\text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.44 \times 4 \times 19.12) \times 1.2 \\ &= 40.38144, \text{ rounded up to 41 pence}\end{aligned}$$

### 440ml can of 9% ABV lager

$$\begin{aligned}\text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.44 \times 9 \times (19.12 + 5.09)) \times 1.2 \\ &= 115.04592, \text{ rounded up to } \pounds 1.16\end{aligned}$$

### 70cl bottle of 37.5% ABV vodka

$$\begin{aligned}\text{Spirits permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.7 \times 37.5 \times 28.22) \times 1.2 \\ &= 888.93, \text{ rounded up to } \pounds 8.89\end{aligned}$$

### 500ml bottle of 4.5% ABV sparkling cider

$$\begin{aligned}\text{Cider permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.5 \times 39.66) \times 1.2 \\ &= 23.796, \text{ rounded up to 24 pence}\end{aligned}$$

### 500ml bottle of 4.5% ABV made-wine

$$\begin{aligned}\text{Made-wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.5 \times 113.01) \times 1.2 \\ &= 67.806, \text{ rounded up to 68 pence}\end{aligned}$$

### 750ml bottle of 12.5% ABV wine

$$\begin{aligned}\text{Wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.75 \times 266.72) \times 1.2 \\ &= 240.048, \text{ rounded up to } \pounds 2.41\end{aligned}$$

### Cocktail containing 50ml 19% ABV port and 275ml 4% ready-to-drink (RTD)

$$\begin{aligned}\text{Wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.05 \times 355.59) \times 1.2 \\ &= 21.3354\end{aligned}$$

$$\text{RTD permitted price} = (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT}$$

$$= (0.275 \times 4 \times 28.22) \times 1.2$$

$$= 37.2504$$

Total permitted price = 21.3354 + 37.2504  
= 58.5858, rounded up to 59 pence

It should be noted that there are different duty rates within each of the categories of beer and wine and cider, and that the appropriate rate should be used. See [Annex A](#) for details of the duty rates for each category.

Product	Description	Exceptions	Notable products
Beer	In the Alcoholic Liquor Duties Act 1979, beer is defined as including ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, whose alcoholic strength exceeds 0.5% ABV. This includes mixtures of beer with non-alcoholic drinks, (for example, with lemonade to produce shandy). Also classified as beer for duty purposes are certain mixtures of beer with alcoholic liquors or substances where the final product strength does not exceed 5.5% ABV	Beer below 1.2% ABV is not subject to duty. Lower-strength beer (2.8% and below) pays the reduced rate. Higher-strength beer (over 7.5% ABV) pays the general beer duty rate plus the higher-strength duty rate. Beer mixed with spirits will be liable to the spirits rate of duty.	Barley wine
Wine and made-wine	Wine is defined as a drink produced by fermentation of fresh grapes or grape must. Made-wine is any other drink - apart from beer or cider - containing alcohol that is made by fermentation, rather than by distillation or any other process.	Still wine and sparkling wine are in different duty brackets. Wine is liable to the sparkling rates of duty if it has an actual alcoholic strength by volume exceeding 5.5 per cent but not exceeding 15 per cent ABV and: in a closed bottle with excess pressure, due to carbon dioxide, of three bars or more at 20°Centigrade, or regardless of pressure, is contained in a closed bottle with a 'mushroom	Wine: Port Sherry Madeira Vermouth Cinzano Mulled wine  Made-wine: Mead Sake Ginger wine Fruit-flavoured cider (flavoured with anything except apple juice)

		shaped stopper' held in place by a tie or fastening.	
Cider and perry	<p>For a drink to be classed as cider or perry for duty purposes, the following apply:</p> <p>A pre-fermentation juice requirement. At least 35 per cent apple or pear juice must be included in any mixture from which fermentation takes place.</p> <p>A final product juice requirement. A minimum of 35 per cent apple or pear juice must be included overall in making the final product.</p>	<p>For duty purposes, the following may not be added to cider:</p> <p>(i) any alcoholic liquor, or</p> <p>(ii) any liquor or substance which communicates colour or flavour,</p> <p>other than such as the Commissioners may allow as appearing to them to be necessary to make cider (or perry).</p> <p>The following are classed as made-wine or spirits:</p> <p>cider of 8.5% ABV or more, or labelled or described as 8.5% ABV or more</p> <p>cider including anything other than certain permitted ingredients, or ingredients in more than specific quantities</p>	
Spirits and ready-to-drink spirit based products	There is one duty band for spirits and ready-to-drink products where the alcohol content comes from spirits.	Fortified wines, including sherry and port, should be classed as wines.	

Where a retailer is uncertain about the category to which a product should belong, the retailer should calculate the permitted price using both categories, and use the higher of the duties.

HMRC have published [detailed guidance](#) on the categories of duty payable, and its [guide to alcoholic duties and procedures](#) gives further detail on types of alcoholic drinks.

See [Annex B](#) for a list of the permitted prices of the most common type of alcohol products. We have also provided a link to an online permitted price calculator at [Annex C](#) which can be used to calculate the permitted prices of those products that are not listed in [Annex B](#).

The duty rate that applies on the day of sale to the customer will be the duty rate that should apply for the calculation of the permitted price.

## Changes to excise duty and VAT

Duty rates may change each year, typically following the Chancellor's Budget. Therefore, those who supply alcohol will need to ensure the new duty rates are applied to the three formulae in the preceding section when duty rates change.

Revised duty rates usually take effect a short time (usually around five days) after the Budget is announced by the Chancellor. It is required that businesses implement changes to their pricing systems within fourteen calendar days of implementation of the new rate to ensure compliance with the mandatory condition.

The same rule will apply to any change in the rate of VAT.

## Updating of pricing systems

Businesses and others who supply alcohol will need to ensure that their pricing systems are accurate to prevent any sale of alcohol below the cost of duty plus VAT. This includes ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.

It is therefore recommended that businesses follow a series of steps to successfully implement the regulation on the premises. A recommended series of steps can be found at [Annex D](#).

## Multibuy promotions

Businesses can continue to sell alcohol as part of buy one get one free promotions. However, businesses will need to ensure that the total purchase price for the package of products is not below the aggregate of the duty plus VAT permitted price for each product comprised in the package. To achieve this, businesses will need to calculate the total of the combined permitted price of each alcoholic product in the promotion.

For example, if a business runs a promotion for the sale of a bottle of whisky with a free bottle of wine then the business will need to combine the permitted price for each of the bottle of whisky (£9.49 for 700ml bottle of whisky with a strength of 40%) and the bottle of wine (£2.41 for 750ml bottle of wine with a strength of 11.5%).  $£9.49 + £2.41 = £11.90$  permitted price for both items as part of a buy one get free promotion.

## Multibuy promotions on non-alcoholic products

In instances where businesses run a promotion for the sale of an alcoholic product and a free non-alcoholic product (such as chocolates, flowers etc.) and vice-versa, businesses will need to ensure that the total purchase price of the promotion is not below the permitted price of the alcohol product comprised in it (or aggregate of the permitted prices if there is more than one alcohol product) as detailed above.

For example, if a retailer runs a promotion for a meal deal that includes a free bottle of wine then the retailer will need to ensure that the selling price of the meal deal is not below the permitted price of the wine.

## Multipack products

Businesses can continue to sell bulk items of alcohol, such as multipacks of beer or ready-to-drink products. Businesses will need to ensure that each multipack is sold above the aggregate of the permitted price of each product in it.

For example, if a business runs a promotion to sell a pack with 24 440ml cans of 4% ABV lager in one multi-pack they will need to calculate the total volume of lager in order to calculate the permitted price.

$24 \times 440\text{ml} = 10.560 \text{ litres}$

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT  
=  $(10.560 \times 4 \times 19.12) \times 1.2$   
= 969.15456, rounded up to £9.70

## Inclusive drinks

Many businesses run promotions in hotels and restaurants, for example, a free bottle of champagne with a hotel room or a drink included in the price of a table meal. Businesses can continue to run these types of special promotions but will need to ensure that the permitted price of the alcoholic product in question is included in the overall price of the promotion.

For example, where a pub offers a table meal with a pint of 4% beer included in the price, the total cost of the table meal must be at or above the permitted price of the beer (ie 53p).

## Complementary drinks

Free drinks provided an ad hoc basis, for instance those offered as compensation for late food service, do not count as sales because the customer has not paid anything for the drink.

## Discount coupons

Businesses may continue to offer discount coupons for alcoholic drinks, but must ensure that the price of the product after all applicable discounts are applied is above the permitted price of the product.

Where a coupon is offered by a producer for a discount on alcohol, retailers should ensure that the price of the drink does not fall below the floor price as a result of that coupon being applied.

Where 'threshold spend' coupons are offered to customers (e.g. save £2 when you spend £15), they may be used to purchase alcohol as long as the total cost of the sale is not below the permitted price for the alcoholic products.

## Reward cards

Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed have an equivalent cash value that is not below the permitted price of the product. Where retailers offer a promotion on reward points or vouchers, the original value of the voucher shall be taken into account.

The price of an alcoholic product is considered to be the amount of money paid by the purchaser at the time of sale. Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price, as they have a cash value only in respect of subsequent sales, and not the present one. For instance, if a promotional voucher is offered to customers for reward points in exchange for buying a particular alcoholic product, the value of the points shall not be taken into account when calculating whether the permitted price has been charged.

## **Staff discount**

Companies can offer staff discount, as long as the price after all discounts are applied is above the permitted price.

## **Online internet sales**

The ban will apply to all sales of alcohol that take place (i.e. the alcohol is despatched) within England and Wales.

As detailed above, businesses will need to ensure that the online price of all alcohol products are sold above the duty plus VAT permitted prices.



## Section 2: Exemptions

The following are exempt from the ban:

- Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003
- Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003
- Low strength beer and other drinks of 1.2% ABV or less

### Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003

Section 173 of the Licensing Act 2003 states that:

(1) An activity is not a licensable activity if it is carried on— .

- (a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,
- (b) aboard a vessel engaged on an international journey,
- (c) at an approved wharf at a designated port or hoverport,
- (d) at an examination station at a designated airport,
- (e) at a royal palace,
- (f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
- (g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
- (h) at such other place as may be prescribed.

This would include sales at airside bars and shops at international airports and seaside at international ferry terminals.

Therefore, a ban on below cost sales will not apply to any alcoholic products sold at these locations.

### Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003

The supply of alcohol in sealed containers as a prize is exempt from the condition under existing provision about incidental non-commercial lotteries in section 175 of the Licensing Act 2003 (an incidental non-commercial lottery is defined in Part 1 of Schedule 11 to the Gambling Act 2005).

This will therefore ensure that free alcohol (in sealed containers) can continue to be awarded as prizes in competitions and raffles in, for instance, community charity events, without being subject to a ban on below cost sales.

### Low strength drinks of 1.2% ABV or less

There is currently no duty paid on alcoholic drinks of 1.2% ABV or less. Therefore, any drink that has a strength of 1.2% ABV or less will be exempt from the condition.

Under section 191(1)(a) of the Licensing Act 2003, the definition of alcohol does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question.

# Section 3: Enforcement

## Responsibility for enforcement

The ban will be enforced by local authorities including licensing authorities, Trading Standards and the police.

It is recommended that enforcement officers only check the prices of heavily discounted alcohol products as these products are most likely to pose a risk of breaching the new mandatory condition. We do not expect enforcement officers to check the price of all alcohol products on the premises unless they feel it is appropriate to do so.

Where necessary, enforcement officers may request a copy of the premises pricing lists and take away for analysis to compare against the duty plus VAT permitted prices. This will ensure that enforcement officers do not spend a substantial amount of time calculating the permitted prices of products on the premises where conditions may be challenging.

## Breach of the ban under the Mandatory Code of Practice

Businesses are required by law to comply with the licensing conditions of the Mandatory Code.

Failure to comply with the permitted price condition may be an offence under section 136 of the Licensing Act 2003. This may also result in a review of the licence, or the service on the premises of a closure notice under section 19 of the Criminal Justice and Police Act 2001.

# Annex A

## Alcohol duty rates (2013)

Alcohol type	Rate from 25/03/2013
Rate £ per litre of pure alcohol	
Spirits	28.22
Spirits-based: Ready-to-drinks	28.22
Wine and made-wine: Exceeding 22% ABV	28.22
Rate £ per hectolitre per cent of alcohol in the beer	
Beer - General Beer Duty	19.12
Beer - High Strength: Exceeding 7.5%ABV - in addition to the General Beer Duty	5.09
Beer - Lower Strength: Exceeding 1.2% - not exceeding 2.8% ABV	9.17
Rate £ per hectolitre of product	
Still cider and perry: Exceeding 1.2% - not exceeding 7.5% ABV.	39.66
Still cider and perry: Exceeding 7.5% - less than 8.5% ABV.	59.52
Sparkling cider and perry: Exceeding 1.2% - not exceeding 5.5% ABV.	39.66
Sparkling cider and perry: Exceeding 5.5% - less than 8.5% ABV.	258.23
Wine and made-wine: Exceeding 1.2% - not exceeding 4% ABV	82.18
Wine and made-wine: Exceeding 4% - not exceeding 5.5% ABV.	113.01
Still wine and made-wine: Exceeding 5.5% - not exceeding 15% ABV.	266.72
Wine and made-wine: Exceeding 15% - not exceeding 22% ABV.	355.59
Sparkling wine and made-wine: Exceeding 5.5% - less than 8.5% ABV.	258.23
Sparkling wine and made-wine: 8.5% and above - not exceeding 15% ABV	341.63

# Annex B

## Duty plus VAT permitted prices (2013)

Based on the 2013 duty rates, examples of an approximate permitted price after a ban on sales below duty plus VAT would be as follows:

Product	Size	ABV (%)	Permitted price
Beer/Lager	275ml	5.0	32p
	300ml	2.0	7p
	300ml	5.0	35p
	330ml	4.5	35p
		5.0	38p
		6.0	46p
	440ml	4.0	41p
		4.5	46p
		5.0	51p
		9.0	£1.16
	500ml	4.0	46p
		4.5	52p
		5.0	58p
	568ml	4.0	53p
		4.5	59p
		5.0	66p
8.5		£1.41	
Sparkling cider and perry	330ml	4.5	16p
	440ml	5.0	21p
	568ml	4.5	28p
	750ml	7.5	£2.33
	2 litre	7.5	£6.20

Still cider and perry	568ml	4.5	28p
		7.0	28p
		8.0	41p
Wine and made-wine	750ml	4.0	74p
		5.5	£1.02
Still wine and made-wine	750ml	11.5	£2.41
		20	£3.21
Sparkling wine and made-wine	750ml	8.0	£2.33
		11.5	£3.08
Spirits	70cl	17	£4.03
		23	£5.46
		37.5	£8.89
		40	£9.49
	1 litre	17	£5.76
		23	£7.79
		37.5	£12.70
		40	£13.55
Spirit-based ready-to-drinks	250ml	6.4	55p
	275ml	4.0	38p
		4.5	42p
	330ml	6.0	68p
	700ml	4.0	95p

# Annex C

## Duty plus VAT permitted price calculator (2013)

<b>Beer</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>High Strength Beer (exceeding 7.5% abv)</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Low Strength Beer (exceeding 1.2% abv, not exceeding 2.8% abv)</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Still cider and perry</b>	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Sparkling cider and perry</b>	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Wine and made-wine</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Sparkling wine and made-wine</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Spirits</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 37.5% abv - insert '37.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.

# Annex D

## Implementation checklist

The following steps are advised in order to ensure that businesses are selling their alcohol products above the permitted prices for duty plus VAT.

Calculate the duty plus VAT permitted price of an alcohol product



Amend the price (if required) on Central Pricing systems to ensure that the correct price is associated with the barcode on the product



Amend the price on price tags/and or pricing displays on shop shelves



Amend the price on menus



Amend the price on promotional posters, flyers and other materials



Amend the price on websites



# Annex E

## Frequently asked questions

### When will the ban come into effect?

The condition providing for a ban on below cost sales would “go live” when the order is brought into force. This is expected to be 6 April 2014.

On and after this date, the mandatory condition would apply to licensed premises and they would be required to comply with it.

### Calculation of prices and updating

### What if duty is paid on the alcohol at one rate, but then the duty that applies at the point of sale is different (e.g. following a change in duty at the Budget)?

The duty that applies at the time that the sale is made is the duty to be used in the calculation of the permitted price.

### How will prices be rounded? For example, if the duty plus VAT on a can of beer is 49.3p, would shops be able to charge at 49p, rounding down, even if this is below the permitted price?

Consistent with the provision in the Alcoholic Liquor Duties Act 1979, prices should be rounded up to the nearest penny.

### How will retailers know which products attract which rate of duty (for instance, products such as alcoholic ginger beer)?

HMRC produces notices which define the products which are included within the duty categories. If a retailer is in doubt about the category of duty rate payable for a particular product, they should use the higher of the possible permitted prices. For instance, if unsure if a product is a cider or a made-wine, prices for both categories should be calculated:

A 500ml bottle of 4.5% ABV product

Cider =  $39.66 \times 0.5 \times 1.2$

= 23.796

= 24p permitted price

Made-wine =  $113.01 \times 0.5 \times 1.2$

= 67.806

= 68p permitted price

In this example, the permitted price for the product would be 68p.

### What about small brewers that pay reduced duty?

Where retailers sell alcohol which is produced by breweries subject to reduced rates of duty under the Small Breweries' Relief scheme, the permitted price for that alcohol may reflect the reduced duty rate. However, retailers should be able to demonstrate that they have taken reasonable steps to satisfy themselves that the reduced rate of duty applies, and where there is doubt, retailers should consider applying the higher duty rate to determine the permitted price.

### How will this affect retailers' obligations under the Grocery Suppliers' Code of Practice (GSCOP)?

The price agreed between the supplier and retailer for products is outside the Code, as is the price the retailers charge consumers. However, if the retailer believes that they need to vary a supply agreement to comply with new legislation, section 3(2)(a) of part 3 of Code allows retailers to vary supply agreements retroactively to allow for circumstances outside their control.

To comply with section 3(3) of part 3 of the Code, the retailer must give the supplier reasonable notice of any variation. A rise in duty rates may be a situation to which this part of the Code could apply.

## Application and enforcement

### **How will this be applied and how will it be enforced?**

As a mandatory condition, the measure is capable of being enforced in the same way as any other condition in a licence.

This provides that a 'relevant person' shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. The relevant person is defined as the premises licence holder, designated premises supervisor (where there is one in relation to the licence) or personal licence holder (there is also provision specifically in respect of clubs).

The prohibition on sales below the prescribed permitted price is a condition. As such, the provisions in the Licensing Act 2003 which apply to conditions (e.g. sections 136 and 139) also apply to this condition. It is an offence by a person to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with an authorisation (the reference to authorisation includes a condition).

However, it is a defence if the person's act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### **What are the penalties for a breach?**

Non-compliance with the condition is likely to mean that the person who made the sale would commit an offence under section 136 of the Licensing Act 2003.

This carries a penalty (on conviction) of up to 6 months' imprisonment and/or a £20,000 fine. It may also result in the licence being reviewed (on the basis of the crime prevention objective).

### **What if retailers do not have an up to date product price list that enforcement officers can take away from the shop floor?**

The production of a price list on request is optional, as enforcement officers can check prices while on the shop floor.

### **What if the price list that has been produced does not take all promotions into account?**

Enforcement officers should be made aware of any known discrepancies

### **Will the enforcement officer come back at a later time to check prices if some on the list that they have taken away are found to be below permitted price?**

This will be for the enforcement authority to decide.

### **Will enforcement be proactive or reactive?**

This is for individual authorities to decide.

## Saving schemes and other promotions

### **How does this deal with the issues of money off vouchers?**

The retailer would be unable to sell alcohol below the permitted price on the basis of any discount arising by virtue of a voucher.

Consumers may still be able to benefit from a discount voucher or other promotion if either the price payable for the alcohol remains above the permitted price after the discount is applied or if they purchase non-alcoholic products with the alcohol (as the prohibition doesn't apply to those products).

### **When alcohol is only part of a basket of goods and a discount or voucher is applied, how should that discount be considered when calculating the permitted price?**

The sale would not breach the condition provided that the aggregate price paid is not less than the permitted price of the alcohol comprised in the sale.

In relation to a sale of two or more alcoholic products, this is the aggregate of the permitted price for each alcoholic product comprised in the sale.

### **What if a supplier voucher takes a price below the permitted price?**

Retailers should be able to show that they have taken all reasonable steps to ensure that discounts applied by supplier vouchers do not take the price of a product below the permitted price.

### **What about loyalty schemes where customers can collect vouchers as a reward for continued custom over a period of time?**

Where the effect of the scheme is to give a person something which in fact has a cash value in a sale of alcohol, its value is taken into account in determining whether its value means that the alcohol was sold below the permitted price.

### **Can retailers still offer staff discount?**

Yes, as long as the price after all discounts are applied is above the permitted price.

### **Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?**

Free drinks offered on ad hoc or impromptu basis, for example as compensation for poor service, do not count as sales because the customer has not paid anything for the drink. This is different to, for instance, 'meal deals' where the drink is offered as part of a package of goods.

### **Where a receipt shows a drink at zero pence, does this count as a sale?**

This does not count as a sale as it has no monetary value.

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*This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 3rd February 2014 and published on 5th February 2014 (ISBN 978-0-11-110912-0). It is being issued free of charge to all known recipients of that draft Statutory Instrument*

*Draft Order laid before Parliament under section 197(4) of the Licensing Act 2003, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

### **LICENCES AND LICENSING**

#### **The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014**

*Made* - - - - - *2014*  
*Coming into force* - - - - - *6th April 2014*

The Secretary of State, in exercise of the powers conferred by sections 19A, 73B and 197(2) of the Licensing Act 2003(a), makes the following Order.

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 condition set out in this Order.

#### **Citation and commencement**

1. This Order may be cited as the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 and comes into force on 6th April 2014.

#### **Mandatory licensing condition**

2.—(1) In relation to an existing or future relevant premises licence, the condition set out in the Schedule is specified for the purposes of section 19(4)(d) of the Licensing Act 2003.

(2) In relation to an existing or future relevant club premises certificate, the condition set out in the Schedule is specified for the purposes of section 73A(e) of the Licensing Act 2003.

- 
- (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 paragraphs 29 and 44 of Schedule 7 to the Policing and Crime Act 2009.  
(c) See section 4(2) of the Licensing Act 2003.  
(d) Section 19(4) was inserted by paragraph 1 of Schedule 4 to the Policing and Crime Act 2009.  
(e) Section 73A was inserted by paragraph 3 of Schedule 4 to the Policing and Crime Act 2009.

## SCHEDULE

Article 2

### Mandatory Licensing Condition

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1—

- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(a);
- (b) “permitted price” is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

- (i) P is the permitted price,
  - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
  - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
- (i) the holder of the premises licence,
  - (ii) the designated premises supervisor (if any) in respect of such a licence, or
  - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

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(a) 1979 c. 4. Section 1 was amended by regulation 2 of the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992 (S.I. 1992/3158), section 162 of and Part I of Schedule 29 to the Finance Act 1995 (c. 4), section 7 of and paragraph 2(a) of Schedule 2 to the Finance Act 1991 (c. 31), section 3 of the Finance Act 1993 (c. 34), section 227 of and paragraph 51 of Schedule 39 to the Finance Act 2012 (c. 14), section 1 of the Finance Act 1995, section 1 of and Part 2 of Schedule 1 to the Finance Act 1988 (c. 39), section 5 of the Finance Act 1997 (c. 16) and article 2 of the Alcoholic Liquor Duties (Definition of Cider) Order 2010 (S.I. 2010/1914). Section 2 was amended by article 6 of the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979 (S.I. 1979/241), regulation 2 of S.I. 1992/3158, section 11 of and Part 2 of Schedule 8 to the Finance Act 1981 (c. 35), section 7 of and paragraph 3 of Schedule 2 to the Finance Act 1991 and section 5 of the Finance Act 1997. Section 3 was amended by article 7 of S.I. 1979/241. Section 4 was amended by article 8 of S.I. 1979/241, section 15 of and paragraphs 2 and 3 of Schedule 1 to the Finance Act 2011 (c. 11) and section 227 of and paragraph 51 of Schedule 39 to the Finance Act 2012 (c. 14). Section 5 was amended by section 1 of the Finance Act 1982 (c. 39) and section 180 of the Finance Act 2013. Section 36 was amended by section 7 of the Finance Act 1991, section 4 of and paragraph 1 of Schedule 1 to the Finance Act 2002 (c. 23), sections 14 and 15 of and paragraphs 2 and 4 of Schedule 1 to the Finance Act 2011, section 180 of the Finance Act 2013 and section 1 of and paragraph 9 of Schedule 1 to the Finance (No. 2) Act 1992 (c. 48). Section 37 was amended by section 15 of and paragraph 1 of Schedule 1 to the Finance Act 2011 and section 180 of the Finance Act 2013. Section 54 was amended by section 1 of and paragraph 12 of Schedule 1 to the Finance (No. 2) Act 1992 and section 5 of the Finance Act 1985 (c. 54). Section 55 was amended by section 1 of the Finance Act 1984 (c. 43) and section 1 of and paragraph 13 of Schedule 1 to the Finance (No. 2) Act 1992. Section 62 was amended by section 3 of the Finance Act 1996 (c. 8), section 10 of the Finance (No. 2) Act 1997 (c. 58), section 180 of the Finance Act 2013, section 4 of the Finance Act 1998 (c. 36) and section 3 of the Finance Act 1997. There are other amendments which are not relevant to this Order.

(e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(a).

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4.—(1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### 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 sale and 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 a mandatory condition which applies to relevant premises licences and club premises certificates.

Paragraph 1 provides that the condition requires a relevant person to ensure that no alcohol is supplied from the premises to which the licence or certificate relates at a price below the permitted price.

Paragraph 2 contains relevant definitions for the purposes of paragraph 1. The permitted price is defined as the aggregate of the duty chargeable in relation to the alcohol on the date of its sale or supply and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to the alcohol on the date of its sale or supply. A relevant person is defined as a premises licence holder, designated premises supervisor or personal licence holder (in relation to premises in respect of which there is a premises licence) and a member or officer of a club who is present and able to prevent a supply of alcohol (in relation to premises in respect of which there is a club premises certificate).

Paragraph 3 provides that the permitted price is rounded up to the nearest penny.

Paragraph 4 provides that a change to the permitted price which would apply as a result of a change to the rate of duty or VAT charged in relation to alcohol would not apply until the expiry of the period of 14 days beginning on the day on which the change in the rate of duty or VAT takes effect.

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(a) 1994 c. 23. Section 2 was amended by section 3 of the Finance (No. 2) Act 2010 (c. 31). Section 7 was amended by section 76 of and Part 1 of Schedule 36 to the Finance Act 2009 (c. 10) and section 203 of and paragraphs 2 and 3 of Schedule 28 to the Finance Act 2012 (c. 14). Section 24 was amended by section 19 of and paragraph 1 of Schedule 8 to the Finance (No. 3) Act 2010 (c. 33). There are other amendments which are not relevant to this Order.

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## CLASSIFICATION OF FILMS IN CINEMAS

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Stephanie Waterford, Residents Services
<b>Papers with report</b>	none
<b>Ward(s) affected</b>	All

### SUMMARY

At the meeting of the Licensing Committee held in January 2014, Officers were instructed to research the regulatory powers in respect of film classifications. The information set out below outlines the powers in regulation and the powers available to the Council as the Licensing Authority.

### RECOMMENDATION

**That the Licensing Committee instructs Officers to begin working on a film classification policy and procedure for adoption by the Licensing Committee.**

### INFORMATION

The exhibition of films is licensed under the Licensing Act 2003. This includes Cinemas, Theatres and any other premises where films may be exhibited for profit. All film exhibitions are subject to a condition requiring restrictions on admission by children according to British Board of Film Classification (BBFC) film classifications.

Councils had provision to censor and classify films themselves in the early part of the 20<sup>th</sup> Century; however, the BBFC was formed in 1912 to ensure a consistent approach to film classifications across the UK.

Local Authorities do have powers to ignore the BBFC decision where they do not agree with the classification given. This rarely happens in practice and would very much depend on local circumstances. Film makers may also seek for their works to be classified by the Local Authority in the absence of a BBFC classification. A typical example of this would be an independent film maker screening works at a film festival.

The Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003, recommends that:

*“Licensing authorities should not duplicate the BBFC's work by choosing to classify films themselves. The classifications recommended by the BBFC should be those normally applied, unless there are very good local reasons for a Licensing Authority to adopt this role. Licensing Authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.”*

In order to classify a film for exhibition, Local Authorities must adopt a policy and have a clear procedure in place. Currently, Hillingdon has no such policy. The power is provided to Licensing Authorities under the Licensing Act 2003, so changes to the Council's Terms of Reference and delegations would not be necessary.

## **FINANCIAL IMPLICATIONS**

None.

## **LEGAL IMPLICATIONS**

Public exhibition of films is a form of Regulated Entertainment and constitutes a licensable activity under the Licensing Act 2003 ('the Act'). A premises which seeks or intends to carry on a business, which involves the use of the premises for the purposes of exhibiting a film, must operate under a premises licence (or a club premises certificate or a temporary event notice).

Where a premises licence authorises the exhibition of films, section 20 of the Act provides mandatory conditions, which must be attached to a licence (section 74 of the Act in the case of club premises certificates). One of the mandatory conditions relates to age restriction. In most cases, the classification body (i.e the BBFC) is specified in a licence and the premises must restrict the admission of children in accordance with the recommendation of that body.

However, the Council as a licensing authority may have cause or obligation to classify a film for exhibition in the following circumstances:

- where no classification body is specified in a premises licence the admission of children to premises exhibiting films must be restricted in accordance with any recommendation by that authority; or
- where it is decided to classify a film to restrict age for a particular film; or
- where the licensing authority is requested to authorise the showing of an unclassified film, for which classification in respect of age will be required.

A policy should set out how the Licensing Service would administer these scenarios.

A policy on the classification of films should take into account the Guidance of the Secretary of State issued under section 182 of the Act. It should also take into account obligations under the Human Rights Act 1998 and any restrictions on material that can be shown under other legislation such as the Obscene Publications Act 1959 and the Copyright Design and Patents Act 1988.

In accordance with paragraph 10.31 of the Secretary of State's Guidance, the Council, via its policy should concern itself primarily with the protection of children from harm. It should not seek to use its powers to censor films, save where there is clear cause to believe that this is required to promote the licensing objectives.

The policy should clarify definitions of 'films' and 'children' and set out the exemptions to exhibition of films as specified in the Act.

A policy should also consider whether any additional delegations from the Licensing Committee to Sub-Committees (or officers) are necessary in order to administer film classification.

## **BACKGROUND DOCUMENTS**

The Licensing Act 2003

Section 182 Guidance under the Licensing Act 2003

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