

Committee(s)	Dated:
Licensing Committee	08/02/24
Subject: Licensing Act 2003 – Pool of Model Conditions	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	1,4,5
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	n/a
What is the source of Funding?	n/a
Has this Funding Source been agreed with the Chamberlain’s Department?	n/a
Report of: Bob Roberts, Interim Executive Director Environment	For Decision
Report author: Aggie Minas – Licensing Manager	

Summary

This report sets out the general principles on licence conditions that can be included on premises licences or club premises certificates issued under the provisions of the Licensing Act 2003 (the Act). The City has a pool of model conditions that can assist applicants, responsible authorities, other persons, and licensing sub-committee members when proposing or imposing conditions on a licence. In carrying out its licensing functions, the City of London Corporation (the City) must have regard to S182 guidance (the guidance) issued under the Act by the Secretary of State. It is good practice for the City to regularly review its pool of model conditions to ensure that they align with changing legislative requirements. The revised pool of model conditions is attached as Appendix 3 to this report.

Recommendation(s)

Members are asked to:

1. Agree the revised pool of conditions attached as Appendix 3 to this report.
2. Agree that minor changes to the Model Conditions is delegated to the Director of Port Health & Public Protection in consultation with the Chairman and Deputy Chairman of Licensing Committee

Main Report

Licensing Act 2003

1. The Act requires that when a licensing authority determines an application in the absence of representations, it must grant a licence subject only to (a) *‘such conditions as are consistent with the operating schedule accompanying the application’* and (b) *‘any conditions which must be included in the licence’* (mandatory conditions).

2. Where relevant representations are made, a licensing authority must, having had regard to the representations, determine the application. If the authority decides to grant application, the licence can be subject to *'such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers appropriate for the promotion of the licensing objectives. Conditions are modified if any of them are altered, omitted or any new condition is added'*.

Section 182 Guidance

3. Paragraph 1.16: Conditions set out the parameters within which premises can lawfully operate and must be written in prescriptive format. Wording such as 'must', 'shall' and 'will' are encouraged to prevent ambiguity about what is expected to be complied with. Conditions must:
 - 3.1. be appropriate for the promotion of the licensing objectives;
 - 3.2. be precise, proportionate, justifiable, unambiguous, enforceable, clear in what they intend to achieve and capable of being met;
 - 3.3. not duplicate other statutory requirements;
 - 3.4. be tailored to the individual type, location and characteristics of the premises and events concerned;
 - 3.5. should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - 3.6. not replicate offences set out in the 2003 Act or other legislation;
 - 3.7. not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave;
4. Paragraph 1.17: It is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.
5. Paragraph 10.2: Failure to comply with any condition attached to a licence or certificate is a criminal offence, which may lead to a criminal prosecution or an application to review the licence. A conviction is punishable by an unlimited fine or up to six months' imprisonment and a review may lead to the revocation of a licence. It is important therefore that conditions are precise and clear for a licence holder to observe.
6. Paragraphs 10.3-10.10: There are three types of conditions that can be included on a licence:

6.1 Proposed conditions:

- 6.1. These can be drawn from the steps described in the applicant's operating schedule to promote the licensing objectives.

- 6.2. A licensing authority should not simply replicate the wording from the schedule but should draw only on such conditions that are appropriate and proportionate for the promotion of the licensing objectives, that are consistent with the operating schedule, and interpreted in accordance with the applicant's intention.
- 6.3. In some cases, discussions take place between the applicant and responsible authorities or other persons who have made representations, where the applicant agrees to accept conditions proposed by the responsible authority or other person without the need for a hearing.

6.2 Imposed conditions:

- a) These can be imposed at a licensing sub-committee hearing following the receipt of representations, where the members are satisfied that it is appropriate to impose conditions to promote one or more of the licensing objectives.
- b) Conditions must be proportional to the size, type, location, characteristics and activities taking place.
- c) Conditions must be determined in a case-by-case basis and standardised conditions should be avoided.
- d) It is possible in some cases that no additional conditions are appropriate.

6.3 Mandatory conditions

- a) Dependent on the activity permitted by the licence, the Act provides for mandatory conditions to be included on a licence in relation to the supply of alcohol, the exhibition of films, and door supervision.
- b) Mandatory alcohol conditions relate to the designated premises supervisor, the authorisation of alcohol sales by a personal licence holder, irresponsible drinks promotions, drinking games, the provision of free tap water, age verification, small measures and the prohibition on sales of alcohol below the permitted price.
- c) Relevant mandatory conditions are automatically applied to licences by process of law and involve no discretion.
- d) A copy of the mandatory conditions is attached as Appendix 1.

City of London pool of model conditions

7. Since 2008, the City has had an adopted pool of model conditions (the model conditions) for licensing applications. The model conditions are not a standard set of conditions but a source of example conditions that are enforceable and can be used to encourage a consistent approach by applicants, responsible authorities, other persons, and licensing sub-committee members when proposing or imposing conditions on a licence. The model conditions are not exclusive or exhaustive and do not restrict any applicant, responsible authority, or other person from proposing any alternative conditions nor would it restrict a licensing sub-committee from imposing any alternative enforceable condition on a licence it considers appropriate and proportionate for the promotion of the licensing objectives.

8. The model conditions were last revised in 2014 and there have been many changes to the Act, the guidance, the City's Statement of Licensing Policy (SoLP) and the City's licensing landscape since then. It is essential that the model conditions are reviewed so they align with current legislative requirements, are reflective of the current SoLP, and continue to be appropriate in achieving their aims in promoting the licensing objectives.
9. The current pool of model conditions is attached as Appendix 2.

Revisions to the model conditions

10. The model conditions have been revised as follows:
 - 10.1. A new introduction and supporting paragraphs 1-4 have been added. The conditions have been regrouped under the relevant licensing objective headings.
 - 10.2. MC1 (replaces original MC01) – CCTV condition: the supplementary wording has been removed as it is not relevant.
 - 10.3. MC2 (replaces original MC02) – Promoted events - no change.
 - 10.4. MC3 – Promoted event risk assessment: New condition requiring a risk assessment where promoted events might be permitted.
 - 10.5. MC4 (replaces original MC03) - Incident Management: the supplementary wording has been removed as it is not relevant. Added the log of entry refusals and incorporates original MC19 – log of underage sale refusals / no ID refusals.
 - 10.6. MC5 – MC7 (replace original conditions MC04 – MC06) - Door Supervisors: wording of the conditions has been amended to make them clearer and unambiguous. The reference to regulated entertainment has been removed as this would suspend the condition during hours and circumstances where entertainment has been deregulated. The requirement to have a specified number of door supervisors has been replaced with the requirement to carry out a risk assessment so that the number of door staff are suited to the type of event and number of customers expected to attend.
 - 10.7. MC8 – (replaces original MC07) - Search Policy: additional wording has been added to make the condition enforceable.
 - 10.8. MC9 – (replaces original MC23) – No single sale of cans/bottles - with additional wording to make the condition clearer.
 - 10.9. MC10 – (replaces original MC28) – No self-service of spirits - no change.
 - 10.10. MC11 – MC12 – (replace original conditions MC10-MC11) – no change.
 - 10.11. MC13 – MC16 – (replace original conditions MC08,MC09,MC16 and 30) – Admissions/readmissions – no change.
 - 10.12. MC17 – (replaces original MC14) Dispersal - additional wording has been added to make the condition enforceable.
 - 10.13. MC18 – (replaces original MC15) – signage – no change.
 - 10.14. MC19 – (replaces original MC12) – general noise - wording of the condition has been amended to make it clear that the condition applies to external doors and windows. The reference to regulated entertainment has been removed as this would suspend the condition during hours and circumstances where entertainment has been deregulated.

- 10.15. MC20 – Music noise, regulated entertainment: new condition similar to MC19 but to apply where entertainment has been regulated following review of licence.
- 10.16. MC21- (replaces original MC13) – loudspeakers – no change.
- 10.17. MC22 - Digital noise limiter: due to an increase in hospitality open roof space and terraces, a new condition has been added to protect sensitive receptors in the vicinity e.g. residents, appropriate to promote the public nuisance objective
- 10.18. MC23 – Noise management plan – due to an increase in hospitality open roof space and terraces, a new condition has been added to protect sensitive receptors in the vicinity e.g. residents, appropriate to promote the public nuisance objective
- 10.19. MC24 – (replaces original MC18) – no change.
- 10.20. MC25 – (replaces original MC17) – off-sale consumption on the highway – wording has been amended to make the condition clearer.
- 10.21. MC26 – off-sale consumption in designated area – new condition – permitting off-sale consumption of alcohol in designated area (covered by pavement licence)
- 10.22. MC27-MC29 – use of designated outdoor space: new conditions have been added to regulate the use of designated outdoor spaces such as roof gardens or pavement licenced areas, where it is not going to cause a public nuisance.
- 10.23. MC30 – (replaces original MC24) – no obstruction of highway – no change.
- 10.24. MC31 – (replaces original MC20) Underage Sales – suitable types of ID amended to reflect amendments to Licensing Act 2003.
- 10.25. MC32 – (replaces original MC21) – unaccompanied children – no change.
- 10.26. MC33-MC35 –(replace original MC25,MC26, and MC29) – service of alcohol with meal – no change.
- 10.27. MC36-MC37 – shadow licences: due to an increase in the number of ‘shadow licences’, new conditions have been added to provide clarity about which licence is in use. A shadow licence is a term used to describe a licence usually granted to a landlord of the building for the protection of having a licence in their own name should the original premises licence lapse or is surrendered. A shadow licence runs concurrently with a premises licence.

11. The revised pool of model conditions is attached as Appendix 3.

Consultation

12. The City’s Licensing and Environmental Health teams have been consulted on and contributed to the revised model conditions as have the City of London Police.

Corporate & Strategic Implications

13. Supporting the City of London Corporate Plan 2018 to 2023 by contributing to all three key aims of a flourishing society, supporting a thriving economy and shaping outstanding environments

Implications

14. There are no financial or legal implications as a result of this report.

Recommendations

15. It is recommended that Members approve the proposed amendments and additions to the model conditions as set out in Appendix 3.

16. To enable amendments or additions to be made to the Pool of Model Conditions as and when required this report also recommends that any further changes to the Model Conditions is delegated to the Director of Port Health & Public Protection in consultation with the Chairman and Deputy Chairman of Licensing Committee.

Appendices

- Appendix 1 – Mandatory Conditions
- Appendix 2 – Current Pool of Model Conditions
- Appendix 3 – Revised Pool of Model Conditions

Background Papers

- [Licensing Act 2003 and associated regulations](#)
- [Licensing Act 2003, S182 guidance](#)
- [City of London Statement of Licensing Policy 2022](#)

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