



# Licensing Committee Report

Date	<b>24 March 2021</b>
Classification	<b>For General Release</b>
Title or report	<b>Amendment to the Councils Licensing Act 2003 Model Conditions</b>
Report of	<b>Director of Innovation and Change and Director of Public Protection and Licensing</b>
Decision maker	<b>Licensing Committee</b>
Wards involved	<b>All</b>
Financial summary	<b>There are no financial implications as a result of this decision.</b>
Report author and telephone	<b>Mr Kerry Simpkin, Head of Licensing, Place and Investment Policy. Tel: 07583 108491</b>

## 1. Executive Summary

- 1.1 Following the revision of the Statement of Licensing Policy in late 2020 it is necessary to make some minor amendments to the Councils pool of model conditions under the Licenisng Act 2003. Officers have taken this opportunity to undertake a review of the Councils Pool of Model Conditions under the Licensing Act 2003 and to propose amendments and updates as appropriate.
- 1.2 The Councils Policy Team, Licensing Service, Environmental Health Consultation Team, Planning Department and the Metropolitan Police Services have been involved with this review. The primary focus has been to update the Pool of Model Conditions so that they continue to be appropriate in achieving their aims in promoting the licensing objectives.
- 1.3 The Councils Policy Team have sought to change certain model conditions to reflect the recent revisions to the Councils Statement of Licensing Policy. These amendments are associated with the provision of alcohol and food. It is proposed to amend model condition 66 so that it aligns with the revised restaurant definition within the Statement of Licensing Policy, to amend condition 38 to refer to substantial table meals and to include the meaning of 'Substantial Table Meals' in conditions 38, 66, 70 and 70A.

- 1.3 The Metropolitan Police Service seek to amend model condition 1 to include a requirement for CCTV outside the premises entrance and an additional four conditions associated with body worn cameras, SIA door staff displaying their licences, ID scan on entry and for shadow licences.
- 1.4 The Councils Licensing and Environmental Health Consultation Team has proposed a number of minor amendments to model conditions. These amendments are intended to refine the conditions and are not intended to substantially change them. They have proposed additional conditions relating to delivery drivers and preventing nuisance, the requirement for a dispersal policy and its availability for inspection and the requirement to have event management plans available at large scale events.
- 1.5 The draft Pool of Model Conditions is attached to this report as Appendix 1. This document identifies, via tracked changes the proposed amendments to existing conditions and the new conditions that have been forward by the relevant service.
- 1.6 To enable the Pool of Model Conditions to be amended as an when required this report also recommends that any further changes to the Pool of Model Conditions is delegated to the Director of Public Protection and Licensing.

## **2. Recommendations**

- 2.1 It is recommended that the Licensing Committee:
  - 2.1.1 Approve the proposed amendments and additions as set out in Appendix 1, and,
  - 2.1.2 Delegate the authority to make further changes to the Pool of Model Conditions to the Director of Public Protection and Licensing.

## **3. Background**

- 3.1 The Council has adopted a pool of model conditions for Licensing Act 2003 applications which are used to encourage a consistent approach to the imposition of conditions on licences or club premises certificates. The Pool of Model Conditions document is made available for applicants, residents, responsible authorities and the Licensing Sub-Committee to use to address common concerns and ensure agreed measures remain in place. These model conditions were last amended in January 2020.
- 3.2 In December 2020 the Council adopted its revised Statement of Licensing Policy following public consultation. The revised Policy came into effect on the 7<sup>th</sup> January 2021.

## **4. Amendments to Model Conditions**

- 4.1 The definition of a restaurant within the Restaurant Policy RNT1 was amended as part of the recent revision to the Councils Statement of Licensing Policy. The revised definition was introduced to take into account the developing styles of restaurants,

particularly relating to customers self seating and the use of disposable cutlery (e.g. chopsticks).

4.2 Within the policy there are a number of references to ‘substantial table meals’. The meaning of substantial table meals is particularly relevant when considering applications that intend to provide alcohol with food and whether they are operating as a restaurant. The glossary within the Councils revised policy now includes a definition for a ‘substantial table meal’. It states:

*“A substantial table meal is a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.”*

4.3 Model condition 66 is used to ensure that applications that intend to operate as a restaurant do so and that they will not be able to amend their operation away from restaurant use without applying to vary this condition. The current wording of model MC66 reflects the previous policy’s definition of a restaurant. It is necessary to amend this condition to reflect the revised definition as set out in the current Restaurant Policy RNT1.

<b>Current Model Condition 66</b>	<b><u>Proposed Revised Model Conditions 66</u></b>
<p>The premises shall only operate as a restaurant:</p> <p>(i) in which customers are shown to their table,            (ii) where the supply of alcohol is by waiter or waitress service only,            (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,            (iv) which do not provide any takeaway service of food or drink for immediate consumption,            (v) which do not provide any takeaway service of food or drink after 23:00, and            (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of</p>	<p><u>The premises shall only operate as a restaurant:</u></p> <p><u>(i) in which customers are shown to their tables or the customer will select a table themselves,</u>  <u>(ii) where the supply of alcohol is by waiter or waitress service only,</u>  <u>(iii) which provide food in the form of substantial tables meals that are prepared on the premises and are served and consumed at a table,</u>  <u>(iv) which do not provide any takeaway service of food or drink for immediate consumption off the premises,</u>  <u>(v) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.</u></p>

<p>alcohol by such persons is ancillary to taking such meals.</p> <p>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</p>	<p><u>For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.</u></p> <p><u>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</u></p>
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4.4 It is proposed to amend model condition 38 (MC38) to include the word 'substantial' before table meal. This will align the condition with the Councils policy approach relating to restaurants. To ensure that licensees are aware of the meaning of a substantial table meal it is proposed to include the Councils definition of a substantial table meal as an informative. MC38 would be amended to:

MC 38 The supply of alcohol at the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

4.5 Model conditions 70 and 70A (MC70 and MC70A) also refer to substantial table meals. It is proposed to also include the Councils definition of a substantial table meal as an informative to this condition. This approach will align these conditions with the proposed changes to MC38 and MC66 above. The condition numbering approach for these conditions do not currently match the approach taken within the Pool of Model Conditions. It is proposed that the numbering of these conditions is amended to MC70A and MC70B. MC70 and MC70A would be amended as follows:

MC70A The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed at the outside tables and chairs shown on the licence plan, shall be by waiter or waitress service, served only to

a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

**MC70B** The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only.

For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

4.6 With the regular use of private hire vehicle booking apps, such as UBER MC60, which required the licensee to provide a dedicated telephone number for a taxi or private hire vehicle service on the premises is not longer likely to be used. Therefore it is proposed to remove that condition.

#### Police proposed amendments and new conditions

4.7 The Police Licensing Team has proposed an amendment to the CCTV condition, MC01 and four additional new conditions that relate to SIA door staff, shadow licences and ID scanners.

4.8 The police propose a minor amendment to the MC01 to add a reference to the external area immediately outside the premises entrance. This addition would ensure that the area surrounding the entrance is covered by CCTV as this is often a higher risk area as this is where people may be refused entry. Most operators will already ensure that this area is covered however the additional wording will ensure that this is conditioned when it is imposed on a licence. The amended condition is shown within the draft Pool of Model Conditions document at Appendix 1.

4.9 The police have put forward two conditions that relate to Security Industry Authority (SIA) licensed door staff. These conditions are intended to ensure that the licensee has a role to play in ensuring that SIA door staff display their licences when working

and if body worn cameras are worn that the recordings are retained and made available in line with the current requirements for premises CCTV. The proposed new conditions are set out below as MC05C and MC06.

MC05C      All door supervisors will correctly display their SIA licence when on duty at the premises.

MC06      The licensee shall ensure that:

(a) All licensed SIA door staff on duty at premises shall be equipped with Body Worn Video (BWV), capable of recording audio and video in any light condition as per the minimum requirements of the Westminster Police Licensing Team,

(b) All recordings shall be stored for a minimum period of 31 days with date and time stamping, and

(c) the viewing of BWV recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.

- 4.10 The next new condition proposed by the police establishes the requirements for the use of ID scanners. ID scanners are widely used in nightclubs. It is a means of taking details of every entrant by scanning the customers photo ID, such as a passport, driver's licence or PASS cards. The production of Photo ID enables some confidence the customer is who they say they are, and old enough to legally purchase alcohol or gain entry. It is also a powerful deterrent to anyone who is under the legal age to purchase alcohol or who may not wish their identification known, e.g. known criminals. ID scanner technology is in most cases able to check the photo ID is legitimate at the door.
- 4.11 The police proposed condition for ID scanners has already been imposed on a number of licensed premises for some years. During this time the police have included a requirement for the ID scanner to be equipped with a camera to retain a facial image of the actual subject entering. This requirement is necessary in the event that they are using legitimate ID but it's not theirs. If an incident, such as a serious assault was to occur at a premises that has an ID Scan and associated camera the police would have an image of the suspect. This would remove the risk of the person who either lost or had their ID stolen being identified as a suspect due to the use of their ID.
- 4.12 It is understood that many people, particularly the older generation, do not routinely carry photographic ID so the police have included within the condition the provision to accept a specified number of customers without photographic ID who can be signed in by a Designated Premises Supervisor or approved manager. The condition requires the entrant to provide some form of ID e.g. a bank card; which virtually everybody carries.

4.13 The ID scan system allows an entrance record to be created without photo ID. It can be populated with an image of the ID provided e.g. a bank card, along with a photo of the customer's face. The condition allows some further exceptions to this and that private pre booked events can forgo ID scan; as their details are recorded already. The proposed new condition is condition is set out below.

MC96 (a) All customers entering the premises shall have their ID scanned on entry, save for when a biometric scanning system is in place. The details recorded shall include a live facial image capture of the customer and capture the photographic identification produced. The details recorded by the ID scanner system shall be made available to the Police and the local authority upon request.

(b) The requirement in (a) above is subject to the following exceptions, namely that a maximum number of (X) guests per night may be admitted at the Managers discretion without necessarily photo ID being scanned and recorded. The admission of such guests however shall be in accordance with the following procedure:

(i) The DPS shall approve in writing the names of a maximum of three managers other than him/herself who are authorised to sign in such guests.

(ii) A legible record (the signing in sheet) of those guest's name shall be retained on the premises for inspection by the licensing authority and Police for a period of 31 days. The name of the DPS approved manager authorising the admission will also be recorded by that manager.

(iii) Guests shall be required to produce some form of ID such as a bank card (or emailed electronic photo ID) and ID scan entry with a live photo shall be created.

(iv) Where there are appropriate reasons for a guest not to be able to produce ID and be subject to ID scan, the Approved Manager may still permit entry. In such circumstance he shall also record the reasons for this in the signing in sheet.

(c) Notwithstanding (a) above, patrons who are attending a pre-booked private event at the premises do not need to have their ID Scanned on entry and instead a written guest list shall be held at reception for the event, and will be retained for 31 days after the event for inspection by the police and responsible authorities upon request.

4.14 The final new condition proposed by the Police relates to shadow licences. Shadow licenses are intended to be held by landlords to protect their investment. The proposed condition would require the shadow licence holder to apply to have the condition removed by way of variation should they wish to operate the premises under that licence. This would provide the police, other responsible authorities and residents an opportunity to examine the licence to ensure that it is fit for purpose and that it will promote the licensing objectives. The proposed new condition is set out below.

MC97            The shadow licence will not take effect when the current licence is in operation, or it lapses, is surrendered or revoked.

Licensing and Environmental Health Consultation Teams proposed amendments and new conditions.

4.15 The Councils Licensing and Environmental Health Consultation Teams has provided a number of proposed amendments to existing model conditions as well as some additional model conditions relating to delivery drivers, dispersal policies and event management plans.

4.16 The amendments to existing conditions are minor and are identified, via tracked changes within the draft Pool of Model Conditions document at Appendix 1.

4.17 To address the concerns of residents and Councillors of the disturbance that can be caused by deliveries from premises, Licensing and the Environmental Health Consultation Teams have proposed two new conditions. The first is MC65, which seeks to prohibit deliveries, by or on behalf of the premises between a specified period, e.g. 23:00 and 08:00 hours. The second condition, MC98 establishes a requirement that delivery drivers are given specific instruction on the use of their vehicles in a responsible manner and to prevent public nuisance. These conditions are listed below:

MC65            No deliveries from the premises, either by the licensee or a third party shall take place between (23:00) and (08:00) hours on the following day.

MC98            Delivery drivers shall be given clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the license premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.

4.18 In some cases, where works are still required the Licensing Authority will impose a condition which is often referred to as a works condition. These conditions normally require the premises to be inspected by the Environmental Health Consultation Team before licensable activities can take place or capacity agreed. A new condition, MC91 has been proposed that will prohibit licensable activities in a defined area of the premises until it has been inspected and the condition removed.

MC91            The areas hatched on the layout plan may not be used for licensable activities until those areas have been assessed as satisfactory by the Environmental Health Consultation Team, at which time a new plan is submitted, and this condition is removed from the licence by the licensing authority.

4.19 Dispersal policies are an important tool to ensure that customers visiting and leaving a licensed venue are managed in a way that reduces public nuisance and crime and disorder in the area. A new condition has been proposed, MC 99 that will require the licensee to retain a copy of their dispersal policy on the premises and make it available for inspection by the Police or an authorised officer of the Council.

MC99            A copy of the premises' dispersal policy shall be available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council.

4.20 At present there are no specific conditions within the Pool of Model Conditions that address large scale events. The Councils Environmental Health Consultation Team often seek conditions on the licences for such events that are very specific to their operation. However, two conditions have become more common and therefore it is proposed to add these conditions to the Pool of Model Conditions.

4.21 The first new condition relating to large scale events is MC100 which will require the premises licence holder to present their event management plan upon request to authorised officers. This condition also sets out the minimum criteria for the event management plan. The second condition is MC101, which requires the premises licence holder to ensure that they run the event in accordance with the event management plan.

MC100            The Premises Licence Holder shall present the Event Management Plan (upon request) to authorised officers at least 28 days before the first event day. The Event Management Plan shall include as a minimum:-

- (a) Covid-19 Statement (if appropriate);
- (b) Access Management Plan;
- (c) Adverse Weather Plan;
- (d) Alcohol Management Plan;
- (e) Cancellation Procedure;
- (f) CCTV Plan
- (g) Communications Plan;
- (h) Child & Vulnerable Adults Policy;
- (i) Crowd Management Plan (including Security and Stewarding Plan);
- (j) Egress Management Plan;
- (k) Emergency Evacuation procedures;
- (l) Event Control Statement of Intent;
- (m) Event Medical Plan;
- (n) Event Safety Plan including Risk Assessment;
- (o) Fire Safety Management Plan;
- (p) Ingress Management Plan;
- (q) Lighting Plan;
- (r) Noise Management Plan;
- (s) Public Liability Insurance;
- (t) Security and Crime Reduction Plan;
- (u) Site Plans;
- (v) Sustainability Statement;
- (w) Terms and Conditions of Entry;
- (x) Trader Food Management Plan;
- (y) Transport Assessment;
- (z) Waste Management Plan.

MC101      So far as is reasonably practicable the Premises Licence Holder shall ensure that the event is run in accordance with the Event Management Plan.

4.22 The Planning Department has reviewed the Pool of Model Conditions and at this stage have not proposed any additional model conditions. However, with the recent change in Use Classes, particularly relating to Use Class E there may be a need to add conditions in the future to address specific concerns that may have previously been addressed via a change of use planning application. The conditions will be kept under review by planning and if a model condition is felt appropriate then they will seek its inclusion in the future. It should be noted that any model condition proposed by planning will be limited to addressing the promotion of the licensing objectives and will not relate to planning matters, which cannot be considered as part of any Licensing Act 2003 licence application.

## **5. Legal Implications**

5.1 There are no legal implications as a result of this report.

## **6. Staffing Implications**

6.1 There are no staffing implications as a result of this report.

## **7. Equalities Impact Assessment**

7.1 There are no equalities impact in the Committee determining to approve the recommendation contained within this report.

## **Appendices**

Appendix 1 – Proposed Amended Westminster City Council Licensing Act 2003 Pool of Model Conditions

**If you have any queries about this report or wish to inspect any of the background papers, please contact:**

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## **Background Papers**

Westminster City Council Statement of Licensing Policy – January 2021