



## Licensing Act 2003 Committee

<b>Date:</b>	Monday, 14 September 2009
<b>Time:</b>	5.30 pm
<b>Venue:</b>	Committee Room 1 - Wallasey Town Hall

**Contact Officer:** Andrew Mossop  
**Tel:** 0151 691 8501  
**e-mail:** andrewmossop@wirral.gov.uk  
**Website:**

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## SUPPLEMENTARY AGENDA

4. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR - DELEGATED AUTHORITY (Pages 1 - 20)

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WIRRAL COUNCIL

LICENSING ACT 2003 COMMITTEE

**14 SEPTEMBER 2009**

REPORT OF THE DIRECTOR OF REGENERATION

## **DELEGATED AUTHORITY**

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### **1.0 EXECUTIVE SUMMARY**

1.1 The purpose of this report is to seek the approval of Members for the Director of Regeneration to have delegated authority to grant Minor Variations under the Licensing Act 2003. Members are also asked to note the changes to the requirements for a Designated Premises Supervisor at community premises.

### **2.0 BACKGROUND**

2.1 Amendments to the Licensing Act 2003 were introduced on 29 July 2009 to allow premises to apply for small variations that will not impact adversely on the Licensing Objectives. Premises are now able to apply to vary their Premises Licence and Club Premises Certificate under the Minor Variation process. On receipt of an application for a Minor Variation, the Licensing Authority must consider whether the variation could impact adversely on the Licensing Objectives. Amendments were also made to the Licensing Act 2003 to remove the requirement for a Designated Premises Supervisor at community premises, such as Village and Church Halls.

2.2 Under the minor variations procedure the following amendments to Premises Licence and Club Premises Certificates may be made:

- (a) minor changes to the structure or layout of the premises
- (b) small adjustments to licensing hours
- (c) the removal of out of date, irrelevant or unenforceable conditions
- (d) the addition of licensable activities other than the supply of alcohol

2.3 The Statutory Guidance issued under Section 182 of the Licensing Act 2003 states that the Government recommends that decisions on minor variations should be delegated to Licensing Officers. Decisions to remove the requirement to have a Designated Premises Supervisor at community premises will be made by the Licensing Act 2003 Sub-Committee if a Police objection is made. If no objections are made then the Licensing Officer will remove the Designated Premises Supervisor from the Premises Licence.

2.4 In considering the application for a Minor Variation, the licensing authority must consult with relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. For instance, an Officer would consult with Environmental Health on an application with possible public nuisance implications. However there is no requirement to consult all responsible authorities on each application and in some cases the licensing authority may be able to make a decision without consultation.

2.5 The Licensing Officer must also consider relevant comments from interested parties if they are likely to affect one or more licensing objectives. In the case of a minor variation,

there is no right to a hearing, but the Licensing Officer must take any comments into account when arriving at a decision.

2.6 If the Licensing Officer refuses the application for a minor variation then a full variation will have to be applied for and the full process would have to be followed.

2.7 In accordance with the Statement of Licensing Policy, Licensing Officers have delegated authority to deal with a number of applications without it being referred to the Licensing Committee, for example where there are no objections to applications. Currently, Licensing Officers are unable to deal with minor variations.

2.8 The Supplementary Guidance detailing the changes to the full guidance issued under Section 182 of the Licensing Act 2003 can be found at Annexe 1.

### **3.0 FINANCIAL AND STAFFING IMPLICATIONS**

3.1 There are no financial or staffing implications arising out of this report.

### **4.0 EQUAL OPPORTUNITIES IMPLICATIONS**

4.1 There are no equal opportunities implications arising out of this report.

### **5.0 LOCAL AGENDA 21 IMPLICATIONS**

5.1 There are none arising directly from this report.

### **6.0 LOCAL MEMBER SUPPORT IMPLICATIONS**

6.1 This report affects the entire Borough.

### **7.0 HUMAN RIGHTS IMPLICATIONS**

7.1 There are no Human Rights implications associated with this report.

### **8.0 COMMUNITY SAFETY IMPLICATIONS**

8.1 Effective control of Licensing Legislation can assist in raising standards and improve the perception of community safety.

### **9.0 PLANNING IMPLICATIONS**

9.1 There are no planning implications arising out of this report.

### **10.0 ANTI-POVERTY IMPLICATIONS**

10.1 There are no anti poverty implications arising from this report.

### **11.0 SOCIAL INCLUSION IMPLICATIONS**

11.1 There are no social inclusion implications arising out of this report.

### **12.0 BACKGROUND PAPERS**

12.1 There are no background papers.

### **13.0 RECOMMENDATION**

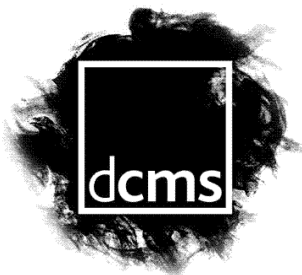
13.1 Members are asked to approve the request that the Director of Regeneration have delegated authority to grant Minor Variations under the Licensing Act 2003. Members

are also asked to note the changes to the requirements for a Designated Premises Supervisor and community centres as detailed in paragraph 2.2 of this report.

Alan Stennard  
Director of Regeneration

This report has been written by Margaret O'Donnell who can be contacted on 691 8606

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department for  
**culture, media  
and sport**

THE LICENSING ACT 2003

Presented to Parliament pursuant to Section 182 of the Licensing Act 2003

# Guidance issued under section 182 of the Licensing Act 2003

Supplementary guidance on:

- a simplified process for minor variations to premises licences and club premises certificates and;
- the removal of the requirement for a designated premises supervisor and personal licence at community premises.

July 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.



# Contents and Notes

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Part 1: A simplified process for minor variations to premises licences and club premises certificates .4  
Part 2: The removal of the requirement for a designated premises supervisor and personal licence at  
community premises..... 10

## **Notes on changes resulting from Part 1:**

Paragraphs 8.33 and 8.34 below replace the corresponding paragraphs in the previous Guidance.

Paragraphs 8.35 to 8.60 below are newly inserted. Subsequent paragraphs (former paragraphs 8.39 to 8.78) are renumbered as 8.65-104, except for former paragraph 8.53, which is replaced and renumbered as paragraph 8.79 below.

Paragraph 8.61 below replaces previous paragraph 8.35.

Previous paragraphs 8.36 to 8.38 inclusive are renumbered as 8.62 to 8.64 inclusive below.

Paragraph 6.11 below replaces the previous paragraph 6.11

## **Notes on changes resulting from Part 2:**

Paragraphs 4.1; 4.2; 4.19; 8.24; 8.34; 10.45 and 10.53 below each replaces the corresponding paragraph in the previous Guidance.

Paragraph 8.79 below replaces previous paragraph 8.53.

Paragraphs 4.32 to 4.47 below are newly inserted.

# Part 1: A simplified process for minor variations to premises licences and club premises certificates

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## [Chapter 8: Applications For Premises Licences]

### VARIATIONS

#### Introduction

8.33 This Guidance revises and replaces the Guidance on variations of premises licences published on 28 June 2007\*. Where a premises licence holder wishes to amend the licence the Act allows, in most cases, for an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.

#### Changes of name and address/ Designated Premises Supervisor

8.34 There are simplified processes for making applications in the following cases: a change of the name or address of someone named in the licence (section 33); an application to vary the licence to specify a new individual as the designated premises supervisor (section 37); an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the mandatory conditions concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); an application for minor variation of a premises licence (sections 41A to 41C).

#### Minor variations process

8.35 The Licensing Act 2003 has been amended by the insertion of sections 41A to 41C relating to minor variations. These sections were commenced on 29 July 2009. Small variations that will not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process. Under this process, the applicant is not required to advertise the variation in a newspaper or circular or copy it to responsible authorities. However, they must display it on a white notice (to distinguish it from the blue notice used for full variations and new applications). The notice must comply with the requirements set out in regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42). In

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\* [http://www.culture.gov.uk/reference\\_library/publications/3667.aspx](http://www.culture.gov.uk/reference_library/publications/3667.aspx)

accordance with those Regulations, the notice must be displayed for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority.

- 8.36 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.
- 8.37 In considering the application, the licensing authority must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. For instance, they may need to consult the environmental health officer on an application with possible public nuisance implications. But there is no requirement to consult all responsible authorities on each application and in many cases the licensing authority may be able to make a decision without consultation.
- 8.38 The licensing authority must also consider any relevant representations received from interested parties within the time limit referred to below. As stated earlier in this Guidance, representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives. In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.
- 8.39 Interested parties have ten working days from the 'initial day', i.e., the day after the application is received by the licensing authority, to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, beginning on the first working day after the authority received the application, with effect either that:
- the minor variation is granted; or,
  - the application is refused.
- 8.40 If the licensing authority fails to respond to the applicant within 15 working days (see section 193 of the Act for the definition of working day) the application will be treated as refused and the authority must return the fee to the applicant forthwith. However, the licensing authority and the applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.
- 8.41 Where an application is refused and is then re-submitted through the full variation process, the full 28 days notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all responsible authorities (in accordance with the regulations applicable to full variations).
- 8.42 Minor variations will generally fall into four categories: minor changes to the structure or layout of a premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and the addition of certain licensable activities. **In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.**

### Changes to structure/layout

- 8.43 Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises ;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
- impeding the effective operation of a noise reduction measure such as an acoustic lobby;

8.44 Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available.

8.45 An application to remove a licensable activity should normally be approved as a minor variation.

8.46 Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.

8.47 The Act covers a wide range of other licensable activities and licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant.

8.48 For example, the addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. Licensing authorities will need to consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is very much the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.

8.49 Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.

8.50 In considering applications to add licensable activities, licensing authorities and officers may find it helpful to consider the following factors:

- the nature of the licensable activity;
- proximity of the premises to residential areas;
- any licence conditions volunteered by the applicant to mitigate the impact of the activity;
- whether alcohol is sold at the premises when the licensable activity is taking place; and whether it will continue to be sold during the extended period. For example, a pub that applies to stay open an extra hour after the sale of alcohol has ended to sell hot drink and food could be considered to benefit the promotion of the licensing objectives;
- track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives, or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;

- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

This is not an exhaustive list and licensing officers should bring their own experience and knowledge of licensing to bear when considering applications.

## Licensing hours

### 8.51 Variations to:

- extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
- to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises

are **excluded** from the minor variations process and must be treated as full variations in all cases. Applications to reduce licensing hours for the sale or supply of alcohol or to or move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

### 8.52 Applications to vary the time during which other licensable activities take place should be considered on a case by case basis with reference to the likely impact on the licensing objectives. In arriving at a decision, licensing authorities may wish to consider the following factors:

- the nature of the licensable activity;
- the extent of additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- proximity of the premises to residential areas;
- any licence conditions already in place to mitigate the impact of the activity; any additional conditions volunteered by the applicant;
- arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?
- whether the proposed extension applies only on the weekend or also during week days;
- whether there will be new admittances during that period;
- track record of the establishment whether positive or negative, e.g. complaints related to the licensing objectives, any enforcement action or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- whether the premises is already open during the extended period for other licensable activities;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

### 8.53 These factors are not an exhaustive list and licensing authorities and officers should bring their own experience and knowledge of licensing to bear when considering applications.

## Licensing conditions

### a) Imposed conditions

8.54 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. If the licensing officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, they should refuse it.

b) Volunteered conditions

8.55 Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority.

8.56 For instance, there may be circumstances when the licence holder and a responsible authority such as the police or environmental health authority, agree that a new condition should be added to the licence. For example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal. Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the responsible authority have come to a genuine agreement. The licensing authority should be alive to any attempts to pressure licensees into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, should discuss this with the relevant parties.

c) Amending or removing existing conditions

8.57 Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition should be treated as a full variation.

8.58 However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.

8.59 Changes in legislation may invalidate certain conditions. For instance, the recent Regulatory Reform (Fire Safety) Order 2005 annulled all fire safety related conditions imposed on licences purely for fire safety reasons. Although the conditions do not have to be removed from the licence, licensees and licensing authorities may agree that this is desirable to clarify the licensee's legal obligations.

8.60 There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the licensing authority to enforce it.

## **Full variations process**

- 8.61 Any other changes to the licence require an application to vary under section 34 of the Act.
- 8.62 Licensing authorities will wish to consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the plan under section 17 of the Act, but have nevertheless been included, for example, moveable furniture (altering the position of tables and chairs) or beer gardens (installation of a smoking shelter that will not affect the use of exits or escape routes).
- 8.63 However, it should be noted that a section 34 application cannot be used to vary a licence so as to:
- extend a time limited licence; or to
  - transfer the licence from one premises to another.
- 8.64 If an applicant wishes to make these types of changes to the premises licence they should make a new premises licence application under section 17 of the Licensing Act 2003.

## **[Chapter 6: Club Premises Certificates]**

- 6.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives. Licensing authorities should refer to Chapter 8 of this Guidance on the handling of such applications. In that Chapter most of the references to the premises licence, premises licence holders, and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.

# Part 2: The removal of the requirement for a designated premises supervisor and personal licence at community premises

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## [Chapter 4: Personal Licences]

### INTRODUCTION

- 4.1. This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. It also contains guidance for decision-making on applications from community premises (church and village halls etc.) to disapply the usual mandatory conditions that relate to personal licences and Designated Premises Supervisors (DPSs).

### REQUIREMENTS FOR A PERSONAL LICENCE

- 4.2 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why individuals who may be engaged in making and authorising the sale and supply of alcohol require a personal licence. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder (see paragraphs 10.48 -10.53 of this Guidance). The only exception is for community premises in respect of which a successful application has been made to disapply the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act. (Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance). Any premises where the personal licence holder requirements do apply at which alcohol is sold or supplied may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence.

### SPECIFICATION OF NEW DESIGNATED PREMISES SUPERVISORS

- 4.19 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the 'designated premises supervisor', as defined in the 2003 Act. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to disapply the usual mandatory conditions set out in sections 19(2) and



19(3) of the 2003 Act. Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance.

## APPLICATION FORMS

8.24 An application for a premises licence must be made in the prescribed form to the relevant licensing authority and be copied to each of the appropriate responsible authorities. For example, applications for premises which are not vessels should not be sent to the Maritime and Coastguard Agency. The application must be accompanied by:

- the required fee (details of fees may be viewed on the DCMS website);
- an operating schedule (see below);
- a plan of the premises in a prescribed form; and
- if the application involves the supply of alcohol:
  - a form of consent from the individual who is to be specified in the licence as the designated premises supervisor; or
  - in the case of a community premises seeking to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (i.e. to remove the usual requirements in respect of the authorisation of alcohol sales by a personal licence holder and for a Designated Premises Supervisor who holds a personal licence), a completed form prescribed for that purpose.

## VARIATIONS

8.34 There are simplified processes for making applications in the following cases: a change of the name or address of someone named in the licence (section 33); an application to vary the licence to specify a new individual as the designated premises supervisor (section 37); an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); and application for minor variation of a premises licence (sections 41A to 41C).

## APPLICATIONS TO CHANGE THE DESIGNATED PREMISES SUPERVISORS

8.79 Paragraphs 4.19 – 4.28 above cover designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor. Paragraphs 4.32 to 4.47 cover applications by community premises to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the authorisation of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence.

## [Chapter 10: Conditions attached to premises licences and club premises certificates]

### Designated Premises Supervisor

10.45 Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. The main purpose of the 'designated premises supervisor' as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force.

That person will normally have been given day to day responsibility for running the premises by the premises licence holder. The requirements set out in paragraph 10.46 to 10.53 below in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see paragraphs 4.32 to 4.47 of this Guidance).

### **Authorisation by personal licence holders**

- 10.53 It must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises, and is also responsible for alcohol sales at community premises where the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to personal licence holders and Designated Premises Supervisors have been disapplied (see paragraphs 4.32 to 4.47 of this Guidance).

## **[Chapter 4: Personal Licences]**

### **DISAPPLICATION OF CERTAIN MANDATORY CONDITIONS FOR COMMUNITY PREMISES**

- 4.32 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (SI 2009/XXXX) amends the 2003 Act to allow certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition in sections 25A(2) and 41D(3) (“the alternative licence condition”) of the 2003 Act in the licence instead of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act. Such an application may only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises (the “management committee”). If such an application is successful, the effect of the alternative licence condition will be that the licence holder (i.e. the management committee) is responsible for the supervision and authorisation of all alcohol sales made pursuant to the licence. All such sales will have to be made or authorised by the licence holder. There will be no requirement for a Designated Premises Supervisor or for alcohol sales to be authorised by a personal licence holder. The Order defines community premises as premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building. While there may be issues relating to whether a premises is a community premises with a proper management committee, there should not be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place. There is more detailed commentary on what constitutes community premises in paragraphs 4.35 to 4.40 of this Guidance.
- 4.33 The process requires the completion of a new form which is set out in The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009/xxxx. Where the management committee of a community premises is applying for authorisation for the sale of alcohol for the first time, it should include the form with the new premises licence application or the premises licence variation application. No extra payment is required beyond the existing fee for a new application or a variation.
- 4.34 Where a community premises already has a premises licence to sell alcohol, but wishes to include the alternative licence condition in place of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act, it should submit the form on its own together with the required

fee. The work required to process such an application is expected to be similar to that required for to process an application for a variation of a Designated Premises Supervisor.

### **Definition of community premises**

- 4.35 In most instances, it should be self evident whether a premises is, or forms part of a church hall, chapel hall or other similar building or a village hall, parish hall, community hall or other similar building.
- 4.36 Many licensing authorities will already have taken a view on how to determine whether a premises meets the definition of community premises for the purpose of the fee exemptions set out in regulation 9(2)(b) of the Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/79). As the criteria are the same, premises that qualify for these fee exemptions for regulated entertainment will also be “community premises” for present purposes.
- 4.37 However, there may be types of premises seeking disapplication of the personal licence and Designated Premises Supervisor requirements which have not previously sought exemption from the fee as a community premises. This might be because they had previously included alcohol or late night refreshment in their licence and therefore had to pay a fee regardless, or may have qualified for the exemption from the fee for regulated entertainment licences as an educational institution.
- 4.38 Where it is not clear whether premises are “community premises”, licensing authorities will need to approach the matter on a case-by-case basis. The main consideration in most cases will be how the premises are predominately used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition. This could feasibly include educational premises, such as school halls, but only where they are genuinely and widely used for the benefit of the community as a whole, and not just for the particular school in question. As such, community premises are usually multi-purpose and a variety of activities can be expected to take place in them, such as playschools, senior citizens’ clubs, indoor sports, youth clubs and public meetings.
- 4.39 Many community premises such as school and private halls are available for private hire by the general public. This fact alone would not be sufficient for such halls to qualify as “community premises”. Although availability of premises for hire might be seen as providing a facility for the community, licensing authorities will want to consider whether halls used largely for private hire by individuals or private entities are genuinely by their nature “community premises”. The statutory test is directed at the nature of the premises themselves, as reflected in their predominant use, and not only at the usefulness of the premises for members of the community for private purposes.
- 4.40 If the general use of the premises was contingent upon membership of a particular organisation or organisations, this would strongly suggest that the premises in question were not “community premises” within the definition. However, the hire of the premises to individual organisations and users who restrict their activities to their own members and guests would not necessarily conflict with the status of the premises as “community premises”, provided the premises are generally available for use by the community in the sense described above. It is not the intention that ‘qualifying’ clubs which are able to apply for a club premises certificate should instead seek a premises licence with the disapplication of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to the supply of alcohol.

## Management of the premises

- 4.41 Sections 25A(1) and 41D(1) and (2) of the 2003 Act allow applications by community premises to apply the alternative licence condition rather than the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act only where the applicant for the licence is the management committee of the premises in question. In addition, sections 25A(6) and 41D(5) require the licensing authority to be satisfied that the arrangements for the management of the premises by the committee or board are sufficient to ensure the adequate supervision of the supply of alcohol on the premises.
- 4.42 The reference to a “committee or board of individuals” is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should have the capacity to provide sufficient oversight of the premises to minimise any risk to the licensing objectives that could arise from allowing the responsibility for supervising the sale of alcohol to be transferred from a personal licence holder/designated premises supervisor. This could include management committees, executive committees and boards of trustees. The application form requires the applicants to provide the names of the management committee’s key officers e.g. the Chair, Secretary, Treasurer.
- 4.43 The application form requires applicants to set out how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations (e.g. when the hall is hired to private parties) and how responsibility for this is to be determined in individual cases and discussed and reviewed within the committee procedure in the event of any issues arising. The application form requires that the community premises submit copies of any constitution or other management documents with their applications and that they provide the names of their key officers e.g. the Chair, Secretary, Treasurer. Where the management arrangements are less clear, licensing authorities may wish to ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application (subject to the views of the police). Community premises may wish to check with the licensing authority before making an application. The management committee is strongly encouraged to notify the licensing authority if there are key changes in the committee’s composition e.g. to the Chair, Secretary, Treasurer and to submit a copy to the Chief Officer of Police. A failure to do so may form the basis of an application to review the premises licence, or be taken into account as part of the consideration of such an application.
- 4.44 As the premise licence holder, the management committee will collectively be responsible for ensuring compliance with licence conditions and the law (and may remain liable to prosecution for one of the offences in the Licensing Act) although there would not necessarily be any individual member always present at the premises. While overall responsibility will lie with the management committee, where the premises are hired out the hirer may be clearly identified as having responsibility for matters falling within his or her control (e.g. under the contract for hire offered by the licence holder), much in the same way that the event organiser may be responsible for an event held under a Temporary Event Notice. Where hirers are provided with a written summary of their responsibilities under the 2003 Act in relation to the sale of alcohol, the management committee is likely to be treated as having taken adequate steps to avoid liability to prosecution if a licensing offence is committed.
- 4.45 As indicated above, sections 25A(6) and 41D(5) of the 2003 Act require the licensing authority to consider whether the arrangements for the management of the premises by the committee are sufficient to ensure adequate supervision of the supply of alcohol on the premises. Where private hire for events which include the sale of alcohol is permitted by the licence, it would be necessary to have an effective hiring agreement. Licensing authorities should consider arrangements for the use of hiring agreements in the light of recommendations for best practice

made by organisations such as ACRE and Community Matters. Model hire agreements are available from these bodies. The model agreements can also be revised to cater for the circumstances surrounding each hire arrangement e.g. to state that the hirer is aware of the licensing objectives and offences in the 2003 Act and will ensure that it will take all necessary steps to ensure that no offences are committed during the period of the hire.

### **Police views**

4.46 An additional safeguard is that in exceptional circumstances the Chief Officer of Police for the area in which the community premises is situated can object to a request for inclusion of the alternative licence condition on the grounds of crime and disorder, and any responsible authority and/or interested party can seek reinstatement of the mandatory conditions through a review of the licence (as provided in section 52A of the 2003 Act). The police will want to consider any history of incidents at an establishment in light of the actual or proposed management arrangements, including the use of appropriate hire agreements. If the Chief Officer of Police issue a notice seeking the refusal of the application to include the alternative licence condition, the licensing authority must hold a hearing in order to reach a decision on whether to grant the application.

### **Appeals**

4.47 Where the Chief Officer of Police has made relevant representations against the inclusion of the alternative licence condition, or given a notice under section 41D(6) which was not withdrawn, the Chief Officer of Police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition. Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing triggered by relevant representations or by a notice given under section 41D(6). Following a review of the licence in which the mandatory conditions are reinstated, the licence holder may appeal against the decision. If the alternative licence condition is retained on review, the applicant for the review or any person who made relevant representations may appeal against the decision.

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