

Licensing Act 2003 Removal of the requirement for a Designated Premises Supervisor (DPS) and Personal Licence at Community Premises

What are the proposed changes?

With effect from 29 July 2009, the Licensing Act 2003 (“the Act”) is amended by virtue of Statutory Instrument 2009/1724¹. These changes will mean that community premises can now apply for the removal of the mandatory conditions on the premises licence which require that:

- a) A designated premises supervisor has to be nominated on the licence; and
- b) That all alcohol sales must be authorised by a personal licence holder.

Instead they will be replaced with an alternative mandatory condition which is that every supply of alcohol under the licence will be made or authorised by the management committee of the community premises rather than by a DPS.

What is a Community Premises?

A Community premises means any church or chapel hall (or other similar building), or any village, parish or community hall (or other similar building). In most cases, it should be self evident whether or not a premises meets the statutory definition but in circumstances where this is less clear, the Licensing Authority will need to approach the matter on a case-by-case basis and the statutory guidance issued in accordance with section 182 of the Act provides advice as to how authorities will consider such applications.

Will these changes apply automatically to Community Premises?

No, such premises will need to make a formal application to remove the existing mandatory conditions and replaced with the new alternative condition.

Under what circumstances can an application be made?

In order to take advantage of these new provisions, an application can only be made if the licence holder is, or is to be, a committee or board of individuals who are responsible for the management of the premises.

¹ The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009.

Is there an application form and is a fee payable?

The application must be made on a prescribed form which is available for download on PCCs website: www.portsmouth.gov.uk/living and can be made in the following circumstances:

- Applying to remove the mandatory conditions of an **existing** premises licence which allows the sale of alcohol;
- Applying to remove the mandatory conditions when applying for a **new** premises licence; or
- Applying to remove the mandatory conditions when applying to **vary** an existing licence to allow the sale of alcohol.

When an application to disapply the mandatory conditions is made in conjunction with either an application for the grant of a new licence or an application to vary an existing licence, there will be no additional fee beyond the cost of the grant or variation application.

In cases where an application is made solely to remove the mandatory conditions of an existing licence there will be a fee of £23.00

What specific information will need to be provided in relation to how the premises is managed?

The Licensing Authority needs to be satisfied that the arrangements for the management of the premises by the committee or board are sufficient to ensure that the sale by retail of alcohol at the premises is adequately supervised.

The term “committee or board of individuals” is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should be able to provide sufficient oversight of the premises so as to minimise any risk to the promotion of the licensing objections that could arise from allowing the responsibility for supervising the sale of alcohol to be transferred from a personal licence holder/designated premises supervisor.

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 how it will be discussed and reviewed within the committee procedure in the event of any issues arising.

Will the committee have to provide details of its constitution?

The application form requires that the community premises submit copies of any constitution or other management documents with their applications and provide names of key officers such as Chair, Secretary and Treasurer. In cases where the management arrangements are less clear, the Licensing Authority will 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.

Should the Licensing Authority be notified of any key changes to the committee or board?

The management committee is strongly advised to notify the Licensing Authority if there are key changes in the committee's composition e.g. change of Chair, Secretary, Treasurer etc. and also to submit a copy of these changes to the Police.

A failure to do so could form the basis of an application to review the premises licence, or be taken into account as part of a consideration of such an application.

What if the community premises are available for private hire purposes?

The community premises will need to ensure that in cases where the premises are available for private hire, they have sufficient arrangements in place to enable adequate supervision of the sale of alcohol. Effective hiring agreements should be in place and available for scrutiny by the Licensing Authority. This is in accordance with recommendations for best practice made by organisations such as ACRE (Action for Communities in Rural England) and Community Matters and model hire agreements are available from these bodies.

Acre: <http://www.acre.org.uk/>

Community Matters: <http://www.communitymatters.org.uk/>

Do I have to copy the application to any other authority?

A copy of the application must also be sent to the Chief Officer of Police for consideration. Contact details are as follows:

The Chief Officer of Police
Hampshire Constabulary
Licensing Unit
Kingston Crescent Police Station
Kingston Crescent
Portsmouth
Hants
PO2 8BU

Tel: 0845 045 4545

Direct Dial: 023 9289 9080

Fax: 023 9289 3285

Email: Portsmouth.licensing@hampshire.pnn.police.uk

Can the Police object to an application?

In exceptional circumstances the Chief Officer of Police 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 Act.

The Police will need to consider any history of incidents at an establishment in light of the actual or proposed management arrangements, include the use of appropriate hire agreements.

If the 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.

How long will it take the Licensing Authority to make a decision?

It will take up to 28 days to consider an application. If there are no objections by the Police, the application can be dealt with by licensing officers.

In those exceptional cases where the Police may object to an application, it will be necessary for a hearing to take place by the Licensing Sub-Committee. This would have to take place within 20 working days from the end of the 28 day time period for consideration of an application.

What happens if an application is refused?

A community premises can lodge appeal with the Magistrates' Court if the Licensing Authority decides to refuse to include the alternative licence condition.

Similarly, where the Police have objected and the Licensing Authority grant the application following a hearing, the Police can appeal the decision to allow the inclusion of the alternative licence condition.

Following a review of the licence in which mandatory conditions are reinstated, the licence holder may appeal against the decision. Equally, 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.

Extracts from the Statutory Guidance issued under section 182 of the Act relating to the removal of the requirement for a designated premises supervisor and personal licence at community premises.

[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 2009/1724) 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 2009/1809. 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.