



LICENSING ACT 2003

GUIDANCE NOTES RELATING TO A REGISTERED CLUB

The Licensing Act recognises that volunteer and social clubs give rise to different issues for licensing law than commercially run premises selling direct to the public. These clubs, such as the Royal British Legion, working men's or sports clubs, are generally organisations where members join together for particular social, sporting or political purpose. The clubs carry on activities from their premises to which the public have restricted access and alcohol is supplied other than for profit.

Clubs which meet the specified criteria, as set out below, in accordance with the Act, are known as 'qualifying clubs' and the authority under which they may supply alcohol and conduct 'qualifying club activities' is a club premises certificate issued by the Council.

The granting of a club premises certificate means that a club is entitled to certain benefits, which include the authority to supply alcohol to its members and sell it to guests without the need for any member or employee to hold a personal licence, and to be nominated a designated premises supervisor.

The arrangements for applying for a club premises certificate is similar to those in respect of a premises licence.

What is a qualifying club?

To be classified as a qualifying club, a number of general conditions must be met. These are:

- That under the rules of the club, persons may not be admitted to membership, or be admitted, as candidates for membership to any of the privileges of membership without an interval of at least two days between their nomination for membership and their admission;
- That under the rules of the club those becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission;
- That the club is established and conducted in good faith as a club;
- That the club has at least 25 members;
- That alcohol is not supplied to members on the premises otherwise than by or on behalf of the club

To qualify as a club authorised to supply alcohol to its members and guests, additional conditions must be met. These are:

- The purchase and supply of alcohol by and for the club is managed by a committee made up of elected members of the club all aged over 18 years;
- No arrangements may be made for any person to receive any commission, percentage or similar payment at the expense of the club with reference to purchases of alcohol by the club;
- No arrangements may be made for any person to derive directly or indirectly an monetary benefit from the supply of alcohol to members or guests apart from to benefit the club as a whole or any indirect benefit a person derives by reason of the supply contributing to a general gain for the club as a whole.

Authorised activities

A club premises certificate may authorise the following qualifying club activities, namely:

- The supply of alcohol by or on behalf of the club to, or to the order of, members of the club;
- The sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place; and
- The provision of regulated entertainment on behalf of club members or club members and their guests.

Regulated Entertainment

The provision of regulated entertainment, i.e. a performance of a play, an exhibition of a film, an indoor sporting event, boxing or wrestling entertainment (indoors and outdoors), a performance of live music, any playing of recorded music, a performance of dance, entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance.

The provision of regulated entertainment only applies where the entertainment takes place in the presence of an audience and is provided for the purpose of entertaining that audience.

Activities which do not involve the provision of entertainment to others are not licensable. For example, the following activities do not amount to regulated entertainment:

- Education – teaching students to perform music or to dance;
- Activities which involve participation as acts of worship in a religious context;
- The demonstration of a product;
- The rehearsal of a play or rehearsal of a performance of music to which the public are not admitted.

There are a number of other entertainments, which are not licensable activities, for example, where live or recorded music may be incidental to the main attraction or performance, for example, stand-up comedy and/or a musical accompaniment, which is incidental to a main performance; live football or other sporting events. A further example would relate to a juke box played at moderate levels would normally be regarded as incidental to other activities, but one played at high volume would not benefit from this exemption.

A more detailed explanation of what constitutes licensable activities is available from the Council or alternately visit the DCMS website at www.culture.gov.uk

AWP Machines

Responsibility for the granting and renewal of AWP machine permits will transfer from the Magistrates' Court to the Council in November 2005. This new responsibility does not fall under the Licensing Act; all applications must still be dealt with in accordance with the Gaming Act 1968. The current fee for the grant or renewal of a permit under Section 34 of the 1968 Act is £32.00.

If you wish to apply for an AWP Machine Permit, you must hold a Club Premises Certificate authorising the supply of alcohol for consumption on the premises. It is understood that some companies who rent or lease machines make the application for the grant and renewal of the permit, where such applications are made, the company should make it clear that the application is made on behalf of, and with the agreement of, the licence holder. In the absence of such information, the application will be postponed until the consent has been received from the licence holder.

No conditions will be attached to the grant of a section 34 permit other than a condition limiting the number of machines authorised under it. Applicants will not be required to provide a plan of the premises indicating where the machines are to be sited. However, all such machines must be located in the bar of the premises. This means any place which, may be used for the supply of alcohol, and which is exclusively or mainly used for the supply and consumption of alcohol.

The holder of a gaming machine permit is still liable to pay duty to Customs and Excise under the Betting and Gaming Duties Act 1981.

Supply of alcohol to under 18's

Under the Licensing Act 2003 a club will commit an offence if alcohol is supplied by it, or on its behalf, to a member of the club who is under 18.

Unaccompanied children

The Licensing Act states that it is now an offence to permit children under the age of 16 who are NOT accompanied by an adult to be present on premises being used exclusively or primarily for the supply of alcohol for consumption on those premises under the authorisation of either a premises licence, a club premises certificate or a temporary event notice. Whether a club is being used exclusively or primarily for the sale or supply of alcohol is a matter of fact for licensing authorities and the courts to determine in any set of circumstances. However, the DCMS have advised that most golf clubhouses are NOT being used either exclusively or primarily for the supply of alcohol, and that they are used for a great variety of purposes.

Making facilities available to the public

Any qualifying club may choose to obtain a premises licence if it decides to offer its facilities commercially for use by the general public, including the sale of alcohol to them. The premises licence can just relate to the club's function room, which it can hire out for private functions, such as weddings and birthdays. If a qualifying club decides to apply for a premises licence that seeks permission to retail alcohol, then it will need to specify and individual to be the designated premises supervisor, who also needs to hold a personal licence. Further information is contained the guidance notes for personal licence holders and the Premises Licence.

If a Club already holds a Public Entertainment Licence, then the Club can apply to convert this licence into a Premises Licence authorising regulated entertainment, but not the retail sale of alcohol.

However, if a club is only expecting to hold up to 12 events in a year they may consider applying for a Temporary Event Notice for each specific event, or alternatively, the hirer will have to apply to the Council for such a Notice. This type of Licence can be used to authorise ad hoc events held in clubs, and replaces the existing occasional permission. However there are a number of limitations:

- No premises may be used more than 12 times per year;
- A maximum of 499 people are permitted to take part in the event;
- No premises may be used for more than 15 days per year;
- Each event may last no more than 96 hours and there must be a least 24 hours between events;
- Non personal licence holders may only make up to 5 applications per year;
- Personal licence holders may make up to 50 applications per year.

You must inform the Council of your proposed event at least 10 working days prior to the commencement date of the event and you will need to include such details as the expected number of people attending, the type and nature of the event and the times.

A copy of the application must be submitted to the Police Authority. Only the Police may make representations on the application on the grounds of crime prevention.

Please note that the Government has not yet released the regulations governing the requirements and application process for this type of licence, as they will not apply till the end of the transition period in November 2005.

Private Events

Entertainment at a private event to which the public are not admitted becomes regulated entertainment, only if it is provided for consideration and with a view to profit. A private event – for example a wedding reception held in a separate room of a pub or hotel would normally be an

event which needs to be covered by a premises licence, as the licence holder would be making available entertainment facilities such as the dance floor and the room for the performance of music for the entertainment of those attending. This would unquestionably be done for a charge and with a view to profit.

A further example – if a charge made by musicians or other performers to the organiser of a private event does not make that entertainment licensable unless the guests attending are charged for the entertainment with a view to achieving a profit.

Large scale temporary events

A premises licence may be sought for a short period if the particular event falls outside of the parameters for a Temporary Event Notice. The limitations relating to Temporary Event Notices are set out in separate guidance, which is available from the Council or by visiting the Council's website at www.bromsgrove.gov.uk/licensing

The procedures for applying for and granting such a licence are identical to those for an unlimited duration premises licence. Where the sale of alcohol is involved, there will need to be a designated premises supervisor specified who must also hold a personal licence.

Should you be considering putting on a large scale temporary event, it is advisable to give early notice of the proposed event to the Council so that the details of the event can be discussed.

Closing early and 'Drinking up Time'

There is no obligation under the Act requiring the holder of either a club premises certificate or premises licence to remain open for the entire period permitted by the licence or certificate.

The authorised period specified in the premises licence, club premises certificate or temporary event notice relates to the period during which alcohol may be sold or supplied and/or licensable activities may take place. It must be noted that 'consumption' of alcohol is not a licensable activity.

Conditions

The only conditions which will be imposed on a premises licence or club premises certificate are those which are necessary and proportionate for the promotion of the licensing objectives and those stated by the applicant in their operating schedule.

The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

A model set of conditions relating to the promotion of the four licensing objectives are available from the Council, or alternatively visit the Council's web-site at www.bromsgrove.gov.uk/licensing

Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both.

Associate Members and guests

As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests, i.e. members and guests from another qualifying club, to the club premises when qualifying club activities are being carried on. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate a reciprocal arrangements.

A visitor can be served in the clubhouse bar as long as they are a 'guest', as defined in the club's own rules. The Act does not set out what clubs are required to put in their rules. It is up to the

club to consider whether its rules should require 'guests' to be physically signed in by a Member or whether some other requirement, such as the payment of a green fee, could apply. The only restriction is that the club must be run in 'good faith' as a genuine members' club and must not become, in effect, a bar open to the general public.

Conversion of existing licences

A person who is the holder of an existing licence (Club Registration Certificate and/or Public Entertainment Licence) or who has the consent of the holder of an existing licence may apply to the Council for the conversion of the existing licence(s) to either a new club premises certificate and/or a premises licence. If you wish to qualify for 'grandfather rights', (i.e. to retain the right to do everything you already do under the existing licence(s)), you will be required to convert your existing licence(s) between 7th February and 6th August 2005. The flow chart at the end of this guide shows you in simplified terms, the steps involved in making the necessary application to the Council.

Application process

When applying to convert your existing Registered Members Club Certificate, you will be required to complete and submit the following:

(a) **Application Form**

The application shall be made in writing on the prescribed form. Forms for making such an application are available from the Council. It is possible to submit your application to the Council by e-mail. However, the application will not be deemed received until the Council has received the supporting paperwork together with the licence fee.

(b) **Plans**

An application for a premises licence shall be accompanied by a plan of the premises. The plan must be drawn to the standard scale of 1cm representing 100cm unless the Council has previously agreed in writing an alternative scale plan is acceptable.

The plan must show the following:

- The extent of the boundary of the building, including any car parks etc., and any external and internal walls which comprise the premises, and if different, the perimeter of the premises;
- The location points of exits and any escape routes from the premises;
- The locations in the premises where the licensable activity is to take place and, if more than one licensable activity is to take place, where each activity is to take place;
- The locations which are used for the consumption of alcohol;
- Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- The location and height of any stage or raised area, if any;
- The location and type of any fire safety and any other safety equipment;
- The location of a kitchen on the premises, if any;
- The location of any steps, stairs, elevators or lifts;
- The location of public toilets.

The plan may include a legend, which clearly illustrates the above-mentioned requirements by the use of symbols on the plan.

- c) Original or certified copy of your existing licence(s), including any additional permissions, such as Children's Certificate, the playing of recorded music, public entertainment licence etc. (if you have lost your original licence or certificate, you will have to contact the issuing authority to obtain a duplicate copy). Photocopies will not be permitted.
- d) Consent from the original Licence Holder named on the existing licence.
- e) A copy of the club rules.

- f) If the application is in the name of a person who does not currently hold the existing licence in respect of the club, a form of consent given by the person who holds the existing licence will be required.
- g) The appropriate fee. Details of the fees are available on the Council's web-site at www.bromsgrove.gov.uk/licensing or by contacting the Licensing Office on (01527) 881473 or (01527) 881405.

A copy of the application must be submitted to the Police Authority within 48 hours of the application being made to the Council.

Licensees will be automatically granted a 'club premises certificate' on exactly the same terms as the existing certificate, unless there is a police objection on the grounds of crime prevention. If relevant representations are received, the Council must, unless the specified persons agree, convene a hearing and consider the representations. This consideration may result in the rejection of the licence application in whole or in part, or the attachment of conditions to the licence that relate to the promotion of the crime and disorder objective.

Application to vary an existing Licence

When you make an application for the conversion of an existing licence and/or certificate, you may at the same time apply for a variation of the newly converted premises licence in accordance with the Act, as if that licence(s) was in force. A variation application can include the alteration of the licensing hours or the removal of any existing conditions attached to current licences.

You will be required to complete and submit the following:

- a) Completion of Part 'B' of the application for an existing licence to be converted;
- b) For a major alteration to a premises licence an 'operating schedule' will also be required which would include details of the licensable activities; operating times; identification of the 'premises supervisor' where supply of alcohol is requested; whether any alcohol is to be consumed on/off the premises; and the steps which the licensee will take to promote the for licensing objectives (see below for further explanation);
- c) You will also be required to advertise the proposed changes (see below for further explanation). A copy of the suggested wording is available from the Licensing Section or via www.bromsgrove.gov.uk/licensing

What is an operating schedule?

Each operating schedule will differ, however you will be required to state the following:

- The qualifying club activities to which the application relates;
- The proposed hours of those activities and any other times during which it is proposed that the premises are to be open to the public;
- Whether or not the alcohol is to be supplied on or off the premises;
- A statement of the steps the applicant proposes to take to promote the four licensing objectives. The Council can provide you with a list of model conditions for each objective which can be tailored to your individual needs.

Advertisement of an application

If you are applying to vary your licence, you will be required to advertise the application by:

- Displaying a notice prominently at or on the premises to which the application relates where it can be read by the public. A copy of the suggested wording is available from the Council;
- The notice must be of a size equal or larger than A4 on pale blue paper;
- And printed in black using a font size equal to or larger than times new roman font 16;
- It must be displayed for a continuous period of not less than 28 consecutive days starting on the day following the day on which the application was given to the Council;
- In addition to displaying a notice on the premises, you will be required to place a notice in a local newspaper, newsletter circular or similar document, circulating in the vicinity of the premises on at least one occasion, no later than 10 working days after submitting your application to the Council.

If there are no representations by either a responsible authority or an interested party, the application must be granted and there should be no hearing by the Council's Licensing Sub-Committee. If a relevant representation is made, there must be a hearing at which the parties may present an argument to the Council's Licensing Sub-Committee. Following the hearing, the Sub-Committee will determine the application and either attach suitable conditions to the Licence or refuse the variation, only if it is necessary for the promotion of the licensing objectives. For example, a condition could be attached preventing the playing of amplified music after 11pm for a premises in a quiet residential area.

The Council may not however do anything to reduce the effect of the rights guaranteed under the conversion of the existing licence, such as reducing the hours of trading to less than the permitted hours under the Licensing Act 1964.

New application for a Club Premises Certificate or Premises Licence

If you do not currently hold any of the licences previously mentioned in this guidance note, and you would like to use a premise for any form of licensable activity, including the supply of alcohol on or off the premises, you will need to apply to the Council for a Premises Licence and/or a Club Premises Certificate.

You will be required to submit an application form, together with an operating schedule, plan of the premises, the prescribed fee, as well as advertising the application as described above. Application forms are available from the Council.

Transfer of a Club Premises Certificate

The Act allows for a Certificate to be transferred to another person. Notice of the application must be given to the Licensing Authority and the Police Authority. The applicant must be over 18 years old. A transfer of the licence only changes the identity of the holder of the licence and does not alter the licence in any other way.

Upon receipt of the transfer application, it will take immediate effect until it is formally determined or withdrawn. This is to ensure that there is no interruption to the normal business at the premises.

If the Police raise no objections to the application, the Council will amend the Licence accordingly. If the Police do raise an objection, on the grounds that the applicant will undermine the Crime Prevention objective, a hearing will be arranged.

Appropriate application forms are available from the Council.

Finally...

A right of appeal to the Magistrates' Court is provided for the applicant against a decision to grant or vary a new Premises Licence or Club Premises Certificate.

Neither the premises licence or Club Premises Certificate nor any variation to the existing licence terms will come into effect until the end of the 'transition' period, i.e. November 2005; prior to this date, existing licences will be enforceable.

Club Premises Certificates or Premises licences are issued by the Council in which the premise is situated.

Once granted, a premises licence or Club Premises Certificate has effect until the licence is revoked, suspended or surrendered, but otherwise it is not time limited unless the applicant requests a licence for a limited period. The summary of the Premises Licence and/or Certificate must be displayed in a prominent position on the premises at all times.

Until the second appointed day, the existing licensing regimes will continue to govern existing licences and related offences will apply. Where existing licences fall for renewal during this period, they will need to be renewed in accordance with that existing law. For example any applications for the renewal of Public Entertainments Licences will still have to be applied for in

the normal way. If you wish to extend your Justices Licence, again you will have to apply in the usual way to the Magistrates' Court.

Further information

If you require further advice, please contact:

Sharon Smith, Principal Licensing Officer, Bromsgrove District Council, The Council House, Burcot Lane, Bromsgrove, Worcs., B60 1AA. Her direct dial telephone number is (01527) 881626, or email her at sharon.smith@bromsgrove.gov.uk

If you require application forms and/or information regarding the prescribed fees, please telephone the Licensing Office direct on (01527) 881473 or (01527) 881405. Alternatively visit our web-site at www.bromsgrove.gov.uk/licensing.

Alternatively, you can visit the Government Department for Culture, Media and Sport at www.culture.gov.uk

These notes are intended to help new and existing licence holders applying for a premises licence under the Licensing Act 2003. These notes are not comprehensive and are not part of the Regulations. They may also be subject to change following approval of the draft regulations issued by the DCMS, which is likely to be in January 2005. Please note that the fees for the new licensing system have not been finalised.