

LICENSING COMMITTEE: 8 September 2009

Report of the Chief Strategic Planning and Environment Officer

**LICENSING ACT 2003 – SUPERVISION OF ALCOHOL SALES IN
COMMUNITY PREMISES**

1. Background

- 1.1 At its meeting of 9 September 2008 it was reported to the Committee for information that on 4 August 2008 the Department of Culture Media and Sport (DCMS) had issued a Licensing consultation document seeking views on the making of a Legislative Reform Order to implement proposals to remove certain requirements at community premises such as church and village halls and to introduce a new minor variations process.
- 1.2 The Legislative and Regulatory Reform Act 2006 (the 2006 Act) enables the Crown, with the approval of Parliament, to make a legislative reform order remove or reduce a burden falling directly or indirectly on any person. In respect of the removal of the need for a Designated Premises Supervisor (DPS) at community premises this has been established by Statutory Instrument 2009/1724 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 which was made on 30 June 2009 to come into effect on 29 July 2009.

2. Details of the Order.

- 2.1 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 amends the Licensing Act 2003 by introducing a new Section 25A, Section 41D and Section 52A. The effect of the amendments is to allow licensing authorities to grant or vary a Premises Licence to include an alternative licence condition relating to the supervision of alcohol sales in premises licences relating to community premises. Community premises are defined to mean any church or chapel hall (or other similar building), or any village, parish or community hall (or other similar building). The Order also includes provisions to enable the original requirement to be reinstated following an application for Review.
- 2.2 Normally, a premises licence that authorises the supply of alcohol must include the conditions set out in section 19(2) and (3) of the Act (“the mandatory conditions”). The mandatory conditions prohibit the supply of alcohol under the licence at any time where there is no designated premises supervisor (DPS)

- specified in the licence, or at any time when the DPS does not hold a personal licence under Part 6 of the Act (or that licence is suspended). They also require every supply of alcohol under the licence to be made or authorised by a person who holds a personal licence.
- 2.3 The amendments to the Licensing Act 2003 introduced by the Order allow a committee or board of individuals with responsibility for the management of community premises (“the management committee”) to apply to have an alternative licence condition included in a premises licence in place of the normal mandatory conditions. The alternative condition is that every supply of alcohol under the licence be made or authorised by the management committee rather than by a DPS.
3. Application Consideration Procedure.
- 3.1 The new sections inserted by the Order into the Licensing Act 2003 modify it with respect to applications for grant, variation and review. The first requirement for the amendments to have effect is for there to be a management committee or board of individuals who are responsible for the management of the premises. Where this is the case a management committee of community premises may make an application for the grant of a Premises Licence authorising the supply of alcohol which is subject to the alternative licence condition instead of the normal mandatory conditions. In such a case, the application does not have to include any form of consent from a person who is to be the DPS, nor any prescribed information regarding such a person.
- 3.2 Similar modifications are made in relation to the variation of licences by the second set of modifications. An application for variation can be submitted in circumstances where a community premises already holds a premises licence and applies to vary it so as to include the supply of alcohol as a licensable activity or where the supply of alcohol is already permitted and the committee wishes to remove the existing requirement for a DPS.
- 3.3 Relevant representations relating to the inclusion of the alternative licence condition may be made by the police in respect of applications for grant and variation. Such representations must include a statement that due to the exceptional circumstances of the case, the chief officer of police is satisfied that the inclusion of the alternative condition instead of the normal mandatory conditions would undermine the crime prevention objective.
- 3.3 If no such representations are made, or the licensing authority does not consider that the normal mandatory conditions are needed to promote the crime prevention objective; and the authority is satisfied that the arrangements for the management of the premises by the applicant are sufficient to ensure adequate supervision of the supply of alcohol on the premises, then the alternative licence condition is to be included in the licence instead of the normal mandatory conditions.

- 3.4 The third set of modifications made by the Order relate to applications for the review of licences which are held by a management committee in respect of community premises, and which include the alternative licence condition instead of the normal mandatory conditions. An application for Review can be made by a responsible authority or interested party in the usual way. Where the premises under review is a community premises with the alternative condition the licensing authority may determine that the normal mandatory conditions should apply instead of the alternative condition if it considers this to be necessary for the promotion of the licensing objectives. Such a determination may be reached following the usual procedure for review applications set out in the 2003 Act.
- 3.5 The provisions in respect of appeals remain unaltered. 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) of the Act which was not withdrawn, an appeal can be made against a 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 41D(6). Following a review of the licence in which the mandatory conditions are re-instated, 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.

3. **Achievability**

This report contains no equality personnel or property implications.

4. **Legal Implications**

- 4.1 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

5. **Financial Implications.**

- 5.1 The permitted fees under the Licensing Act 2003 are set nationally by the Government. Applicants for grant or variation of a licence will be required to submit the appropriate fee.

6. Recommendation

It is recommended that the report be noted and that in respect of applications made in accordance with the provisions of the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009:

- a) The Chief Strategic Planning and Environment Officer and Operational Manager (Licensing and Strategic Services) be delegated authority to approve the alternative condition to enable the removal of the mandatory condition in Sections 19(2) and 19(3) of the Licensing Act 2003 where no representations have been received; and
- b) The Licensing Sub-Committee be delegated authority to consider applications where representations are received.

SEAN HANNABY

31 July 2009

CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: Report to the Licensing Committee of 9 September 2008 entitled "Minor Variations and Removal of Personal Licence Holder Requirements from Community Premises."