

DRAFT STATUTORY INSTRUMENTS

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**2009 No. XXXX**

**LICENCES AND LICENSING**

**REGULATORY REFORM**

**The Legislative Reform (Minor Variations to Premises Licences  
and Club Premises Certificates) Order 2009**

*Made* - - - - - *2009*

*Coming into force in accordance with article 1(1)*

The Secretary of State for Culture, Media and Sport makes the following Order in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a) (“the Act”).

He considers that the conditions referred to in section 3(2) of the Act are, where relevant, satisfied in relation to each provision made in the Order.

He has consulted in accordance with section 13(1) of the Act.

He has laid a draft of the Order and an explanatory document before Parliament in accordance with section 14(1) of the Act.

Pursuant to section 15 of the Act, the super-affirmative resolution procedure (within the meaning of Part 1 of the Act) applies in relation to the making of the Order.

The period of 60 days referred to in section 18(2) of the Act has expired.

In accordance with section 18(2) of the Act he has had regard to any representations, resolution and recommendations made during that period and in particular to the Second Report of Session 2008-09 of the Delegated Powers and Regulatory Reform Committee (published on 22 January 2009) and the Second Report of Session 2008-09 of the House of Commons Regulatory Reform Committee (published on 29 January 2009).

In accordance with section 18(7) of the Act he has laid a revised draft Order before Parliament together with a statement.

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(a) 2006 c. 51; section 1(6) was amended by SI 2007/1388

In accordance with section 18(8) of the Act, the revised draft Order has been approved by resolution of each House of Parliament.

### **Citation, commencement and extent**

1.—(1) This Order may be cited as the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 and comes into force—

- (a) for the purpose of making regulations pursuant to section 17(5)(a) and 71(6)(a) of the Licensing Act 2003(a) (as applied by sections 41A(4) and 86A(4) of that Act), on the day after the day on which it is made;
- (b) for all other purposes on the twenty-eighth day after it comes into force as specified in subparagraph (a).

(2) This Order extends to England and Wales only.

### **Amendment of the Licensing Act 2003: premises licences**

2.—(1) The Licensing Act 2003(b) is amended as follows.

(2) After section 41, insert—

*“Variation of licences: minor variations*

#### **41A Application for minor variation of premises licence**

(1) Subject to subsection (3), the holder of a premises licence may apply under this section (instead of under section 34) to the relevant licensing authority for variation of the licence.

(2) Subsection (1) is subject to regulations under—

- (a) section 54 (form etc. of applications etc.);
- (b) section 55 (fees to accompany applications etc.).

(3) An application may not be made under this section to vary a premises licence so as to—

- (a) extend the period for which it has effect,
- (b) vary substantially the premises to which it relates,
- (c) specify an individual as the premises supervisor,
- (d) add the supply of alcohol as an activity authorised by the licence,
- (e) authorise—
  - (i) the supply of alcohol at any time between 11pm and 7am, or
  - (ii) an increase in the amount of time on any day during which alcohol may be sold by retail or supplied, or
- (f) include the alternative licence condition referred to in section 41D(3).

(4) The duty to make regulations imposed on the Secretary of State by subsection (5)(a) of section 17 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

#### **41B Determination of application under section 41A**

(1) This section applies where the relevant licensing authority receives an application made under section 41A.

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(a) 2003 c. 17. 2003 c. 17. The Licensing Act 2003 is further amended by the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (S.I. 2009/....) which, inter alia, inserts section 41D into that Act.

(b) 2003 c. 17. The Licensing Act 2003 is further amended by the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (S.I. 2009/....) which, inter alia, inserts section 41D into that Act.

- (2) In determining the application the authority must—
- (a) consult such of the responsible authorities as it considers appropriate, and
  - (b) take into account any relevant representations—
    - (i) made by those authorities, or
    - (ii) made by an interested party and received by the authority within ten working days beginning on the initial day.
- (3) If the authority considers that—
- (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or
  - (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect,
- it must grant the application.
- (4) In any other case the authority must reject the application.
- (5) A determination under this section must be made within the period of fifteen working days beginning on the initial day.
- (6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—
- (a) the application is rejected, and
  - (b) the authority must forthwith return the fee that accompanied the application.
- (7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—
- (a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 41A,
  - (b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or
  - (c) both.
- (8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.
- (9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.
- (10) For the purposes of this section—
- “initial day” in relation to an application means the first working day after the day on which the authority receives the application;
- “relevant representations” in relation to an application means representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives.

#### **41C Supplementary provision about determinations under section 41B**

- (1) Where an application is granted under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.
- (2) The notice under subsection (1) must specify—
- (a) any variation of the premises licence which is to have effect as a result of the grant of the application, and
  - (b) the time at which that variation takes effect.
- (3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.

(4) Where an application is rejected under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.

### **Amendment of the Licensing Act 2003: club premises certificates**

3.—(1) The Licensing Act 2003 is amended as follows.

(2) After section 86, insert—

*“Variation of certificates: minor variations*

#### **86A Application for minor variation of club premises certificate**

(1) Subject to subsection (3), a club which holds a club premises certificate may apply under this section (instead of under section 84) to the relevant licensing authority for variation of the certificate.

(2) Subsection (1) is subject to regulations under—

- (a) section 91 (form etc. of applications etc.);
- (b) section 92 (fees to accompany applications etc.).

(3) An application may not be made under this section to vary a club premises certificate so as to—

- (a) vary substantially the premises to which it relates,
- (b) add the supply of alcohol to members or guests as an activity authorised by the certificate, or
- (c) authorise—
  - (i) the supply of alcohol to members or guests at any time between 11pm and 7am, or
  - (ii) an increase in the amount of time on any day during which alcohol may be supplied to members or guests.

(4) The duty to make regulations imposed on the Secretary of State by subsection (6)(a) of section 71 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

#### **86B Determination of application under section 86A**

(1) This section applies where the relevant licensing authority receives an application made under section 86A.

(2) In determining the application the authority must—

- (a) consult such of the responsible authorities as it considers appropriate, and
- (b) take into account any relevant representations—
  - (i) made by those authorities, or
  - (ii) made by an interested party and received by the authority within ten working days beginning on the initial day.

(3) If the authority considers that—

- (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or
- (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect,

it must grant the application.

(4) In any other case the authority must reject the application.

(5) A determination under this section must be made within the period of fifteen working days beginning on the initial day.

(6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—

- (a) the application is rejected, and
- (b) the authority must forthwith return the fee that accompanied the application.

(7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—

- (a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 86A,
- (b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or
- (c) both.

(8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.

(9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.

(10) For the purposes of this section—

“initial day” in relation to an application means the first working day after the day on which the authority receives the application;

“relevant representations” in relation to an application means representations which are about the likely effect of the grant of the application on the promotion of the licensing objectives.

### **86C Supplementary provision about determinations under section 86B**

(1) Where an application is granted under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(2) The notice under subsection (1) must specify—

- (a) any variation of the club premises certificate which is to have effect as a result of the grant of the application, and
- (b) the time at which that variation takes effect.

(3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.

(4) Where an application is rejected under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.

(5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.

Date

*Gerry Sutcliffe*  
Parliamentary Under Secretary of State  
Department for Culture, Media and Sport

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order inserts new provisions into the Licensing Act 2003 (c. 17) in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006 (c. 51).

The new provisions establish procedures for the variation of premises licences and club premises certificates in cases where the licensing authority considers that none of the variations proposed by the holder of the licence or certificate could have an adverse effect on the promotion of any of the licensing objectives set out in section 4(2) of the 2003 Act.

The purpose of the Order is to save time, money and regulatory resources by allowing variations that could not impair the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.

The holder of a premises licence or club premises certificate may apply to the relevant licensing authority (as defined in section 12 or 68 of the 2003 Act) for variation of the licence or certificate under the new provisions (the new sections 41A and 86A respectively). Applications will be subject to regulations made in the exercise of the Secretary of State's powers under sections 54, 55, 91 and 92 to prescribe the form and manner of making applications, the information and documents that must accompany them, and the fee to be paid to the relevant licensing authority. They will also be subject to regulations made by the Secretary of State under sections 17(5)(a) and 71(6)(a) requiring the applicant to advertise the application.

In determining an application the authority must consult such of the responsible authorities mentioned in section 13 or 69 of the 2003 Act as it considers appropriate. The authority must take into account any relevant representations made concerning the application by those authorities or by an interested party (as defined in section 13(3) or 69(3) of the 2003 Act), provided in the case of the latter that the comments are made in writing within ten working days following the date of receipt of the application by the authority. Relevant representations must be about the likely effect of the grant of the application on the promotion of the licensing objectives.

The relevant licensing authority must grant an application under the new provisions only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives in section 4(2) of the 2003 Act. In any other case the authority must reject the application.

This procedure is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, where the applicant must give notice of the application to each responsible authority, and where the application must be referred to an oral hearing in the event that an authority or interested party makes a relevant representation (see sections 34 to 40 and 84 to 86 of the 2003 Act).

An application may not be made under the new provisions if the effect of the variations proposed in it would be to extend the period for which a premises licence has effect; to vary substantially the premises to which a premises licence or club premises certificate relates; to specify (in a premises licence) an individual as the premises supervisor; to authorise the sale or supply of alcohol or to authorise the sale by retail or supply of alcohol at any time between 11pm and 7am or increase in the amount of time on any day during which alcohol may be sold by retail or otherwise supplied; or 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 at community premises. Variations of these kinds must be made through the normal variations procedure set out in sections 34 to 40 (premises licences), 84 to 86 (club premises certificates), or section 41D (community premises) of the 2003 Act.

If the relevant licensing authority grants an application under the new provisions it must notify the applicant in writing, specifying the variations which are to have effect as a result and the time when they are to have effect. If an application is refused, the authority must notify the applicant in writing, giving its reasons for the refusal. The authority is required to reach its determination

within a period of fifteen working days starting on the first working day after the authority receives the application, otherwise the application is rejected and the authority must return the application fee. The authority and the applicant may agree to treat the application or the fee or both as rejected, returned and resubmitted as a new application.

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*Revised Draft Order laid before Parliament under section 18(7) of the Legislative and Regulatory Reform Act 2006, for approval by resolution of each House of Parliament.*

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