

SPELTHORNE BOROUGH COUNCIL

NOTES TO ACCOMPANY PREMISES LICENCE WITH SALE OF ALCOHOL INCLUDED AS A LICENSABLE ACTIVITY

Embedded restrictions

Those who have chosen to convert existing justices' licence with no simultaneous variation to remove such conditions, will need to be aware that the new licence has been granted "subject to conditions which reproduce the effect of any restriction imposed on the use of the premises for the licensable activities under the relevant existing licence or licences by any enactment specified for the purposes of this part".

Duty to notify change of name or address

The holder of a premises licence must as soon as reasonably practicable notify the licensing Authority that issued the licence of any change in-

- (a) His name or address; or
- (b) The name and address of the designated premises supervisor

Where such notice is given the premises licence must be sent to the authority with the prescribed fee of £10.50

The designated premises supervisor must copy the notification of the change of name or address to the holder of the premises licence.

An offence is committed if the notification requirements summarised above are not complied with without reasonable excuse.

Variations of licences

The variation procedure enables holders of premises licences to apply to vary the licensable activities or conditions subject to which the licence is held.

Where "substantial" variations are contemplated, a new premises licence may be necessary. Conversely, small alterations to the layout of premises which would not have necessitated application for consent to alterations under the 1964 Licensing Act, is unlikely to need a variation application.

If you are planning to make alterations which may impact on the promotion of the licensing objectives, or make changes which impact on the conditions attached to licences, an application for a variation will need to be made.

Variations can also be applied for to provide additional licensable activities at the premises eg music and dancing where these activities are not currently authorised by the licence. It should be noted that the "two in a bar rule" has expressly been removed as a lawful activity if your licence does not include regulated entertainment.

There is a fee for such a variation which is dependant upon the rateable value of the premises.

Variation of licence – new premises supervisor

A designated premises supervisor is the individual specified for the time being as the person in a position of responsibility at any premises selling alcohol. It does not mean that this person needs to be on the premises all the time. The proposal that the premises licence should specify the name of such a person caused considerable controversy

during the passage of the Licensing Bill through Parliament but the Government has made it clear that it is essential that police officers, fire officers and officers of the licensing authority can identify immediately the person who is in a position of authority at any premises selling or supplying alcohol.

It is worth emphasising that there is a mandatory condition on the licence that

No supply of alcohol may be made under the Premises licence-

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended

An application must therefore be made to vary a premises licence to appoint a new designated premises supervisor immediately. This can have interim effect, but if the person who is named as the DPS has left without such an application having been made, you cannot sell alcohol until such time as such an application has been granted.

An application made for the variation of a premises licence pursuant to s37 which is intended to have interim effect must include a request that the variation to appoint the new designated premises supervisor should have immediate effect.

There is a prescribed fee for such a variation of £23.00.

Mandatory Condition that each sale of alcohol must be authorised by a Personal Licence Holder

It is also worth emphasising the above mandatory condition. There is a lot of confusion about what this actually means and no one can give an authoritative answer at present. Government guidance is as follows:

- The persons authorised to sell alcohol should be clearly identified
- The authorisation should have specified the acts which may be carried out by the person being authorised
- There should be an overt act of authorisation, for example, a specific oral or written statement given to the individuals being authorised
- There should be in place sensible arrangements for monitoring by the Personal Licence holder of the activity authorised by him or her on a regular basis

Request to be removed as premises supervisor

Where an individual wishes to cease being a designated premises supervisor, he may notify the licensing authority of this and copy the request to the premises licence holder. The request must be accompanied by the licence.

Transfer of premises licence

A person may apply for the transfer of a premises licence if they are a person listed in s16(1). An application must be in the approved form and with the prescribed fee and may be submitted to have interim effect. The application must be copied to the police.

Interim authority notices

Special provision is made for circumstances where a premises licence has lapsed due to the holder's death, incapacity or insolvency.

Review of premises licence

The Act permits nearby residents or businesses, or authorities to apply for a review of a premises licence, which could ultimately lead to the revocation of the premises licence and should therefore be taken seriously. There are grounds for licensing authorities to reject applications for review in certain circumstances, but if not rejected will trigger a hearing of the Licensing sub-committee. The closure of the premises by the police would normally automatically lead to a review.

Production of licence, rights of entry etc

The licensing authority can require the holder of a premises licence to produce the licence (for example for the purpose of updating the documents) to the authority within 14 days.

The holder of the licence must ensure that the licence or a certified copy of it is kept at the premises in the custody of the holder, or a person who has been given a written nomination by the holder for this purpose.

The summary of the licence (or a certified copy) and a notice specifying the position held at the premises by the person responsible for the custody of the licence must be prominently displayed at the premises.

A constable or authorised person may, at any reasonable time before the determination of an application for the grant of the licence, enter the premises to which the application relates. An authorised person must produce evidence of his authority if so requested. Intentional obstruction of such a person constitutes an offence.

The requirement to have the name above the door was not a "condition" under the 1964 Act, but a substantive offence. It is not therefore carried forward. It is replaced by the requirement outlined above.

Gaming machines

Schedule 6 to the Act amends the Gaming Act 1968 in respect of the grant of s34 permits for amusement with prizes machines in premises licensed for the sale of alcohol for consumption on the premises. On the Licensing Act "Second appointed day" (expected to be around November 2005) the responsibility for granting such permits will be transferred from the licensing justices to the licensing authority.

The Secretary of state recommends that licensing authorities should not require applicants to provide a plan indicating where the machines are to be sited, and that permits authorising up to two machines may be granted without a hearing.

The Performing Rights Society (PRS)

The PRS (www.prs.co.uk) exists in order to administer the copyright in musical works on behalf of their writer and publisher members. If you will be using music at a premises, don't forget to take out a licence with PRS; as failure to do so could result in legal action being taken by them.

This information is intended for guidance only and is not intended to provide authoritative legal advice

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