

# Licensing Act 2003

# Disapplication of DPS requirements

## Guidance notes

**What type of premises can disapply the designated premises supervisor (DPS) provisions?**

Where premises are selling alcohol the Licensing Act 2003 (“the Act”) allows for the mandatory requirement to have a designated premises supervisor (“DPS”) to be disapplied in relation to premises licences held by “community” type premises.

“Community premises” being defined as premises that are or form part of-

(a) a church hall, chapel hall or other similar building, or

(b) a village hall, parish hall, community hall or other similar building.

**How will you decide whether or not my premises are a “community” type?**

Where it is not clear whether premises are “community premises”, we 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.

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, we 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.

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 Act relating to the supply of alcohol.

**What does “disapplication” mean?**

Section 19 of the Act makes it a mandatory condition, in any premises licence authorising the sale of alcohol, that there must be no supply of alcohol under the licence when either:

i) there is no DPS in respect of the licence, or

ii) where the DPS does not hold a current personal licence.

In addition, it is a mandatory condition that every supply of alcohol must be made, or authorised by, a personal licence holder.

Whenever the mandatory conditions are disapplied an alternative mandatory condition will automatically apply instead. The effect of this alternative condition will be that responsibility for authorising sales of alcohol would fall on the premises licence holder itself, which will be the committee or board of individuals responsible for the management of the premises.

These individuals will be required to undertake the responsibilities that would normally be undertaken by a DPS. Provided the premises licence holder (i.e. the committee) had properly authorised the sale of alcohol, for example in written form through a hire agreement, an organisation or hirer using these premises for the sale of alcohol under the authority of the premises licence would not be required to obtain a personal licence.

There will be no automatic disapplication of the conditions in respect of any premises. A management committee of a community, church or village hall that seeks the removal of the conditions from an existing licence, or wishes to apply for a licence that does not include them will need to apply to us for the conditions to be removed, and have the alternative condition imposed instead. This may be done either as a part of a grant application, or as a separate application to vary their licence to disapply the DPS provisions.

**In making an application to vary my licence to disapply the DPS provisions what do I need to produce?**

An applicant must produce:

1. A completed application form;

2. Any documents (if available) which identify the premises and how it is managed;

3. The appropriate fee of £23.00; and,

4. You must also submit the premises licence (or the appropriate part of that licence), or if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

**Who do I serve the application on?**

Licensing Section

Commercial Team

Cotswold District Council

Trinity Road

Cirencester

GL7 1PX

Licensing Unit

Community Engagement Dept

Police Headquarters

No 1 Waterwells

Quedgeley

Gloucester

GL2 2AN

**What happens next?**

The process for disapplication of the usual mandatory conditions will be similar to the process that applies under section 37 of the Act in respect of a change of DPS for particular premises.

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, we will 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 – see below). As a result community premises may therefore wish to check with us before making an application.

We are required to determine the application taking into account any representations from the police (which have to be made within 14 days of us receiving the application).

If the police issue a notice seeking the refusal of the application to remove the usual mandatory conditions, we must hold a hearing in order to reach a decision on whether to grant the application.

Following the grant of the application the management committee is strongly encouraged to notify us 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 (see below).

**Once removed can the mandatory conditions be re-imposed?**

Where a premises licence has had the usual mandatory conditions removed, they may be reinstated if concerns arise over the promotion of *any* of the licensing objectives. In such a case, an interested party (e.g. a local resident) or a responsible authority (any of those listed in section 13(4) of the Act, e.g. the police) may apply to us for a review of the licence.

Upon review, which will be conducted in accordance with the usual procedure under sections 51 to 53 of the Act, we may reinstate the DPS requirements if we think it necessary for the promotion of any of the licensing objectives.

**How will you approach “community” premises in the event of offences under the Licensing Act?**

The management board or committee will remain the premises licence holder and will be collectively responsible for ensuring compliance with licence conditions and the law. The hirer may be clearly identified as having responsibility for matters falling within his or her control (e.g. in the contract for hire between the hirer and the premises licence holder), e.g. as per events held under Temporary Event Notices. Where hirers are provided with a written summary of their responsibilities under the 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.

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| Application for the mandatory alcohol condition under the Licensing Act 2003 requiring a Designated Premises Supervisor in respect of a premises licence to be disapplied  |
| PLEASE READ THE FOLLOWING INSTRUCTIONS FIRSTBefore completing this form please read the guidance notes at the end of the form.If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes in written black ink. Use additional sheets if necessary. |

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| Once completed please give your application to: Licensing, Cotswold District Council, Trinity Road, Cirencester. GL7 1PX. You may wish to keep a copy of the completed form for your records. |

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| We       being a board or committee of individuals with responsibility for the management of the community premises described in Part 1 below, and being the applicant for a premises licence / premises licence holder *[delete as applicable]* in respect of those premises apply for the condition referred to in section 19(4) of the Licensing Act 2003 to be included in the licence instead of the conditions referred to in section 19(2) and (3) of the said Act. (see guidance note 2). Part 1 – Community premises details

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| Name of premises      |
| Postal address of premises or, if none, ordnance survey map reference, or description      |
| Post town       | Postcode       |

Telephone number at premises (if any)

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**Premises licence number (if applicable)**

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| **Brief description of premises and the composition of the committee or board of individuals with responsibility for the management of the premises** (Please see Guidance Note 3)       |

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| **Please describe how you will ensure that alcohol sales are properly supervised and what arrangements you have in place (if any) for hiring out the premises** (Please see Guidance Note 4)      |

Part 2 – Applicant details We are the premises licence holder [ ]   (*Please tick yes*)Contact phone number in working hours (if any)

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**E-mail address (optional)**

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**Current address (if different from premises address)**

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**Post Town**

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**Postcode**

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**Telephone (if any)**

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*Please tick yes as appropriate*I have enclosed the premises licence [ ] I have enclosed the relevant part of the premises licence [ ] This form accompanies a new premises licence application [ ] If you are varying an existing licence and have not ticked one of the first two boxes above, please explain why in the box below.

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| **Reasons why you have failed to enclose the premises licence or relevant parts**      |

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| **Any further information to support your application**      |

Checklist:*Please tick yes* **If applying to remove the mandatory requirements from an existing premises licence that already authorises alcohol sales** **- I have made or enclosed payment of the fee** [ ] **- I have included documents (if available) which identify the premises****and how it is managed** [ ] **- I have included copies of any hiring agreements** [ ] **- I have sent a copy of this application to the chief officer of police** [ ] **- I understand that if I do not comply with the above requirements****my application will be rejected** [ ] **If applying alongside a new application or variation for a permission to allow alcohol sales****- this application accompanies a new premises licence application / this application accompanies an application to vary an existing premises licence** *[delete as applicable]***- I have enclosed the premises licence or relevant part****of it or provided an explanation** [ ]   **- I understand that if I do not comply with the above requirements****my application will be rejected** [ ] IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE,UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION  |

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| Part 3 – Signatures (Please see guidance note 5) Signature of applicants. Please provide two signatories of members of the management committee stating in what capacity they represent the premises licence holder.First SignatureDate     Capacity     Second Signature  |

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| --- | --- | --- | --- | --- | --- |
| Date     Capacity

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| **Contact name (where not previously given) and address for correspondence associated with this application**      |
| **Post town**      | **Postcode**      |
| **Telephone number (if any)**     |
| **If you would prefer us to correspond with you by e mail your e mail address (optional)**      |

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## Notes for Guidance

1. This form may be used by a community premises seeking to replace the mandatory conditions in sections 19(2) and 19(3) of the 2003 Act which requires a personal licence holder and Designated Premises Supervisor where a premises allows the supply of alcohol, with the alternative mandatory condition (in section 19(4) of the Act) that the supply of alcohol is instead authorised by the premises licence holder through either:

- applying to remove the mandatory conditions of an existing premise licence which allows the sale of alcohol;

- applying to remove the mandatory conditions when applying for a new premises licence that includes the sale of alcohol; or

- applying to remove the mandatory conditions when applying to vary an existing premises licence to allow the sale of alcohol.

On applying for the removal of the requirement to have a Designated Premises Supervisor, the management committee should understand that if this is granted they will be responsible for all alcohol sales under the licence.

2. The applicant must be a committee or board of individuals with responsibility for the management of the premises – enter name of committee or board.

3. Describe the premises and the management structure. In particular, explain why you consider it to be a community premises i.e. is it available for community benefit most of the time and accessible by a broad range of persons and sectors of the local community for purposes beneficial to the community as a whole. If the community premises is a registered charity, please include its Charity Commission number. Set out how the premises is managed and the structure of the committee or board of individuals with responsibility for its management (including the names of the committee’s of board’s key officers, e.g. the chair, secretary, treasurer). Please include any documents e.g. a written constitution or other management documents that show the structure of the premises and how it is managed.

4. Describe how the supervision of alcohol sales is to be ensured in different situations (including e.g. when the community premises is hired to private parties, when the community premises is hired for large fundraising events and when the community premises is hired for short fundraising events by local voluntary organisations). Set out how responsibility for alcohol sales is to be determined in individual cases and discussed and reviewed within the committee’s or board’s procedure in the event of any issues arising. You should include copies of hiring agreements that describe the arrangement made between the community premises and the hiring party. You should note that sample hire agreements are available from e.g. ACRE and Community Matters. More information about these hire agreements is contained in the statutory Guidance.

5. Applications to substitute the section 19(4) mandatory condition must be made by a management committee or similar structure which holds or will be the holder of the premises licence for the community premises. Please state in what capacity you are signing the application (e.g. Committee Chair, committee member, Hall secretary etc).

6. Please send a copy of this form to the chief officer of police for your area.