

A Guide to the Licensing Act 2003 – Registered Clubs

What is the general effect of the Act?

The Licensing Act 2003 transfers responsibility for the licensing of premises to sell and supply alcohol away from the Magistrates Court to the Council.

What do I need a licence for?

A licence is required for the following activities:

- To sell alcohol by retail
- To supply alcohol to a club member, or to sell alcohol to a guest of a club member, in the case of qualifying clubs
- To provide regulated entertainment
- To sell hot food or drink between 11.00pm and 5.00am for consumption on or off the premises.

What is regulated entertainment?

The following kinds of entertainment are subject to regulation:

1. Plays
2. Film exhibitions
3. Indoor sporting events
4. Boxing or wrestling exhibitions
5. Live music (karaoke included)
6. Recorded music
7. Dancing by the public or performers
8. Any entertainment similar to that described in 5, 6 or 7 above.

But only where –

- The entertainment is provided in front of an audience or spectators and is for the purpose of entertaining those persons AND
- The entertainment is:
 - To any extent to members of the public OR
 - Exclusively to members of a qualifying club and their guests; OR
 - For consideration and with a view to profit. The charge must be made by or on behalf of the entertainment organisers or management or the premises management, and must be paid for by or on behalf of some or all of the persons attending the event. This would include, for example, letting out a room in the premises for people to use for wedding receptions.

What about music in small premises?

A licence is still required for regulated entertainment, even in small premises. However, no conditions on the licence relating to music entertainment shall apply between 8.00am and midnight provided that:

- The premises are used primarily for the consumption of alcohol on the premises;
- The capacity of the premises is less than 201 persons;
- The premises are being used for unamplified live music or facilities to enable people to take part in such entertainment -

unless the Council specifies the conditions are necessary to prevent crime and disorder or for public safety reasons.

However, conditions imposed as a result of something which was stated in the operating schedule still apply for small premises under any circumstances.

What about providing entertainment facilities?

A licence for regulated entertainment is required, even if only **providing** facilities for making music, dancing, or entertainment of a similar description.

This means, for example, that a licence is required for:

- Having a piano on the premises for the use of customers or performers;
- Having a dancefloor on the premises;
- Providing a video jukebox.

When do I not require a licence for regulated entertainment?

- Films which are solely or mainly to demonstrate a product, advertise goods or services, or provide information, education or instruction;
- Films as part of an exhibition in a museum or gallery;
- TV and radio broadcasts, providing they are shown “live” and not recorded;
- Religious meetings or services;
- Entertainment in places of public religious worship;
- Garden fetes (unless held for private gain);
- Entertainment provided in a moving vehicle;
- Morris dancing;
- Incidental entertainment.

What is “incidental entertainment”?

Incidental entertainment is entertainment provided not as the main purpose of the event. This is sometimes a difficult area and applicants should contact their own legal advisor for further advice. Examples of “incidental” entertainment are:

- a supermarket playing background music (people go there to shop - the music is not an influencing factor);
- music during keep fit classes (people are there to exercise);
- Dance classes (people are there to learn to dance);
- a pub jukebox playing in the background (people are there to drink, the music is not an influencing factor).

How do I make an application?

See the separate guidance notes for full details of the application process.

What are Qualifying Clubs?

Qualifying clubs are organisations where Members have joined together for particular social, sporting or political purposes and supply alcohol for members and their guests only. Some common examples include Labour, Conservative and Liberal Clubs, the Royal British Legion, other ex-services clubs, working men's clubs, miner's welfare institutions and social and sports clubs.

To be a Qualifying Club applicants must comply with the following rules:

- At least 48 hours must pass between people being admitted to membership, or as candidates for membership, and their admission to the Club;
- If Members are admitted without nomination, the Club rules must state they will not be admitted to the privileges of membership until 48 hours have elapsed from them becoming a member;
- The Club must be conducted in good faith (see below);
- The Club must have at least 25 members;
- Applicants must not supply, or intend to supply, alcohol to members on the premises otherwise than by, or on behalf of, the Club.

Under the Licensing Act 1964, qualifying clubs could sell alcohol to minors. The sale or supply of alcohol to children in these clubs is now unlawful under the new Act and cannot take place.

In order to supply alcohol on the premises, the applicant must also meet the following conditions:

- Unless managed by the Club in general meetings or by a body of members, the purchase of alcohol for the Club, and supply of alcohol by the Club, must be managed by a Committee whose members are all members of the Club aged 18 or over, and who have been elected by the members of the Club. There is an exemption to this condition for industrial and provident societies, friendly societies and miner's welfare institutions;
- No person can receive, or be intended to receive, any commission, percentage or similar payment at the Club's expense on or concerning purchase of alcohol by the Club;
- No person can derive, or be intended to derive, a financial benefit from the supply of alcohol by or on behalf of the Club to guests or Members, except where:
 - The benefit accrues to the Club as a whole;
 - The benefit derived indirectly by a person from the supply producing or contributing to a general gain from the carrying on of the Club.

What does "conducted in good faith" mean?

The following factors must be considered when deciding whether a Club is conducted in good faith:

- Arrangements restricting the Club's freedom in purchasing alcohol;
- Any provision in the Club rules or arrangements concerning how money or property of the Club or any gain arising from the carrying on of the Club will be spent, unless it is for the benefit of the Club as a whole or for charitable, benevolent or political purposes;
- The arrangements for providing members with information about Club finances;
- The account books and other records ensuring the accuracy of that information;
- The nature of the premises occupied by the Club.

Where the Council is not satisfied that a Club is being conducted in good faith, it must give notice of its decision and the reason for it.

What are the benefits of being a Qualifying Club?

- A Personal Licence to sell or supply alcohol is not required
- A Designated Premises Supervisor is not required;
- The Police and authorised persons have more limited powers of entry because the premises are considered private and not open to the public;
- The premises are not subject to powers of Police closure on grounds of disorder and noise nuisance (unless they are being used under a Temporary Event Notice or Premises Licence at the time) because they operate under strict rules of discipline and rules that are rigorously enforced;
- The premises are not subject to potential Magistrates Court orders to close all licensed premises in an area where disorder is happening or expected to happen.

What is a Personal Licence?

A Personal Licence is not required if operating solely under a Club Premises Certificate or Temporary Event Notice. The exemption does not apply where the premises is hired out for wedding receptions and the like. A full Premises Licence is usually required in such circumstances (unless only holding a small number of events, in accordance with TEN) It will be necessary to appoint a DPS (designated premises supervisor, who is also a personal licence holder).

Application for a Personal Licence must be made to the Council in whose district the applicant ordinarily lives.

There is no limit to the number of Personal Licence Holders who may work at a premise in order to comply with the legislation. Applicants may choose to become a Personal Licence Holder in order to apply for more than five TEN's a year, but otherwise would not require one.

Designated Premises Supervisor

All premises operating under a Premises Licence to sell or supply alcohol must appoint a Designated Premises Supervisor (DPS) for the premises. The DPS will be the first point of contact with the responsible authorities where there are concerns regarding the operation of the premises. Applicants should therefore choose this person with care.

The DPS must be nominated on the application form for a premises licence. The DPS does not have to be on the premises at all times, but must have day to day control of the premises.

A person cannot become a DPS unless he is also a Personal Licence Holder.

What about if I let out a room for private hire?

A room cannot be made available for private hire for licensable activities to non-members under the terms of your Club Premises Certificate.

Where hiring is proposed, either a Temporary Event Notice must be obtained (subject to the limits stated below) or a Premises Licence for the room itself.

Other areas within the premises may operate under the Club Premises Certificate (for the times it is operating as a Qualifying Club). The function room may operate under a Premises Licence, which may be used on those occasions when the room was hired out. A Personal Licence Holder must be present to be on the premises for the times when alcohol is sold to non-members.

What about one off events and special occasions?

If a licensable activity that falls in to one of the following categories:

- Less than 500 people attending
- Lasting for not more than 168 hours (7 days), with a break of at least 24 hours thereafter

The event can be authorised by submitting a Temporary Event Notice (TEN) to the Council.

The notice allows a licensable activity to take place on premises that are not currently licensed, or to hold activities that an existing licence does not permit. This would include for example:

- Selling alcohol at a school fete
- Providing regulated entertainment at a pub where the current licence does not permit this
- Staying open to sell hot food in to the night on a special occasion (e.g. New Years Eve)
- Selling alcohol after the hours the normal licence permits, e.g. for a special occasion
- An amateur dramatics group putting on a play in unlicensed premises.

Are there any restrictions on TEN's?

- 50 TEN's a year can be applied for by a Personal Licence Holder (see section below on Personal Licences);
- 5 TEN's a year can be applied for by non Personal Licence Holders;
- Applicants must be aged 18 or over;
- Restrictions apply where the applicant is an "associated person" of someone who has already given a TEN, including spouses, close relations, agents and employees, and their spouses. The word "spouse" also includes someone living with the notice giver;
- A maximum of 12 TEN's a year can be applied for in relation to any particular premises, subject to an overall limit of no more than 21 days in total .

Where the event/activity falls outside these restrictions, a full Premises Licence will be required.

Where the number of TEN's applied for exceeds the limits above, the Council must serve a counter notice prohibiting the event from going ahead. This must be served at least 24 hours before the event.

The Council will consult with West Yorkshire Police and Environmental Health on the notice. The Police and Environmental Health are able to object on one or more of the four licensing objectives. Where the Police and Environmental Health do object, a public hearing will be held in front of the Licensing Sub Committee to determine the application (unless all parties can agree a hearing is unnecessary). The Committee will listen to and consider representations from all parties before determining whether the event can go ahead. If an objection is made to a TEN the Licensing Authority may impose conditions if appropriate to do so. However, Government guidance requires that the Council refuse permission for the event in such circumstances unless there are exceptional reasons not to do so.

What about outdoor events?

An outdoor space is still regarded as "premises" under the Act and event organisers must give notice for any licensable activities held in the open air. Where the event is for more than 500 persons, a Premises Licence will be required. A Premises Licence may be granted to have effect for a limited duration, e.g. for a one day festival.

Small outdoor events of 500 persons or less can be dealt with by way of a Temporary Event Notice.

Will tacit consent apply?

Yes, after the 28 day consultation period has expired if no representations have been received from Responsible Authorities or Interested Parties, then the Club Premises Certificate is granted as applied for. The certificate will be issued to you shortly after.

The information herein is provided as guidance only and is not intended to be either a comprehensive nor exhaustive explanation of the requirements and obligations arising out of the Licensing Act 2003.

It is the responsibility of the applicant/licensee to become acquainted with and observe the statutory requirements in respect of all activities, entertainments and undertakings the subject of any licence application.

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