

EXPLANATORY MEMORANDUM TO
THE LICENSING ACT 2003 (PREMISES LICENCES AND CLUB PREMISES
CERTIFICATES) (AMENDMENT) REGULATIONS 2018

2018 No. 232

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations substitute the prescribed application form to vary a premises licence to specify an individual as designated premises supervisor under the Licensing Act 2003. The prescribed form includes amended notes which indicate that notice of the application to change the designated premises supervisor (“DPS”) must be given to the existing supervisor, but this does not mean that a copy of the prescribed form must be given to the existing supervisor. This protects the personal data of the proposed DPS.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (“the 2005 Regulations”) included notes in Schedule 5 (Application to specify an individual as the DPS under the Licensing Act 2003) that required the Applicant to give a copy of the application form to the existing DPS. The Licensing Act 2003 (Miscellaneous Amendments) Regulations 2017 (“the 2017 Regulations”) amended Schedule 5 of the 2005 Regulations to require the applicant to include additional personal details (nationality, place of birth and date of birth) of the proposed DPS in the application form, but did not amend the requirement to give a copy of that application form to the existing DPS. The current instrument amends the application form in Schedule 5 of the 2005 Regulations to remove the requirement to give a copy of that application form to the existing DPS, and replaces it with a requirement to give notice to the existing DPS of the application, with guidance notes indicating that it will be sufficient to give notice to the existing DPS in writing of the application, without needing to share a copy of the application form. The Department has consequently adopted the free issue procedure in relation to this instrument.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2003 Act enables a regime under which premises are authorised to be used for certain activities (referred to as “licensable activities”), namely: the sale of alcohol by retail (for consumption on or off the premises); the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment (the provision of hot food and hot drink between 11pm and 5am). The grant of an authorisation by a licensing authority must be made with a view to promoting one or more of the four licensing objectives: the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.
- 4.2 The Licensing Act 2003 contains powers to prescribe forms and notices and makes provision for what they must and may contain.
- 4.3 Certain prescribed forms and notices were updated via the 2017 Regulations to reflect changes made in other legislation. The application form to vary a premises licence to specify an individual as DPS was amended to require additional personal information about the proposed DPS, but a consequential amendment is needed to remove the requirement to give a copy of the application form to the existing DPS.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 These Regulations amend the application form to vary a premises licence to specify an individual as DPS. The form includes the nationality, place of birth and date of birth of the proposed DPS. This additional information was added to assist the police with checking the criminal history of the DPS before the application is granted. The form asks the applicant to give a copy of the form to the existing DPS (if any). This completed form would contain personal information about the proposed new DPS and sharing this information would be in breach of the Data Protection Act 1998. Section 37(4)(b) of the Licensing Act 2003 requires the premises licence holder to notify the existing DPS (if any) about the application. It is sufficient for the licensee to inform the existing premises supervisor without the need to share the application form or the details of who the proposed DPS is. The form has been amended to state that it is sufficient to notify the existing DPS in writing without the need to share the application form. These Regulations also add clarity to the form by inserting an additional guidance note to explain that the applicant has the option at part 2 of the form of requesting that the application be given immediate effect (that is, from the time that the application is received by the licensing authority). This reflects section 38 of the Licensing Act 2003 which allows the holder of a premises licence to continue the supply of alcohol if, for example, the existing premises supervisor is suddenly indisposed or unable to work.

Consolidation

7.2 Not applicable.

8. Consultation outcome

8.1 The changes made by these regulations have not been the subject of consultation.

9. Guidance

9.1 Statutory guidance is issued under section 182 of the Licensing Act 2003 to licensing authorities on the discharge of their functions under the 2003 Act. The form includes additional guidance notes and is self-explanatory.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 Representatives of the licensed trade including those who represent small businesses will be notified of this change to ensure that those businesses employing up to 50 people are aware of the revised form.

12. Monitoring & review

12.1 There are no plans to review these regulations. This order clarifies and corrects an existing statutory form and adds no new regulatory procedures and no net impact on business is foreseen.

13. Contact

13.1 Robert Turner at the Home Office Drugs and Alcohol Unit on 020 7035 8836 or robert.turner2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.