

*This draft Statutory Instrument supersedes the draft laid on 8<sup>th</sup> December 2008 and published on 12<sup>th</sup> December 2008 and is being issued free of charge to all known recipients of that Statutory Instrument.*

*Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006; draft to lie for forty days, pursuant to section 16(3) of that Act, during which period either House of Parliament may resolve that the Order not be made; or, during the first thirty days a committee of either House may recommend that the Order not be made, which recommendation may be rejected by resolution of that House in the same Session.*

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## 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<sup>(1)</sup> (“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 negative resolution procedure (within the meaning of Part 1 of the Act) applies in relation to the Order.

Neither House of Parliament resolved, within the 40-day period referred to in section 16(3) of the Act, that he should not make the Order.

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<sup>(1)</sup> 2006 c. 51; section 1(6) was amended by [SI 2007/1388](#)

### **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 on the twenty-first day after the day on which it is made.

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

### **Premises licences: amendment of the Licensing Act 2003**

2.—(1) The Licensing Act 2003(2) 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 sale by retail or supply of alcohol as an activity authorised by the licence,
- (e) authorise—
  - (i) the sale by retail or 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).

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

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

(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 comments made by those authorities in relation to the application.

(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

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(2) [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) 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 first working day after the day on which the authority receives the application.

(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.

#### **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.”.

#### **Club premises certificates: amendment of the Licensing Act 2003**

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 as an activity authorised by the certificate, or
- (c) 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 supplied.

**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 comments made by those authorities in relation to the application.

(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 first working day after the day on which the authority receives the application.

(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.

### **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.”.

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

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## 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.

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, and take into account any comments made concerning the application by those authorities. This is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, under which the applicant must give notice of the application to each responsible authority (which authorities may then make representations requiring the application to be referred to an oral hearing) and must also advertise the application as required by regulations made under the 2003 Act.

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.

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 Part 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.