
STATUTORY INSTRUMENTS

2009 No. 3159

LICENCES AND LICENSING

**The Licensing Act 2003 (Premises licences
and club premises certificates) (Amendment)
(Electronic Applications etc) Regulations 2009**

Made - - - - 1st December 2009

Laid before Parliament 3rd December 2009

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated in relation to services in the internal market for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act, and sections 17(3)(b) and (6), 34(5), 41A(4), 54, 71(4)(b) and (7), 84(4), 86A(4) and 91 of the Licensing Act 2003⁽²⁾.

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc) Regulations 2009 and come into force immediately after the Provision of Services Regulations 2009⁽³⁾.

Amendment of the 2005 Regulations

2. The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005⁽⁴⁾ are amended as set out in regulations 3 to 10.

Interpretation

3. In regulation 2(1)—

(a) in the definition of “notice”, before “means” insert “(except in regulation 39B)”;

(1) 1972 c. 68, to which there are amendments not relevant to these Regulations.
(2) 2003 c. 17. Sections 17(6) and 71(7) were inserted by, and sections 34(5) and 84(4) were substituted by regulation 49 of the Provision of Services Regulations 2009 (S.I. 2009/2999). Sections 41A and 86A were inserted by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (S.I. 2009/1772).
(3) S.I. 2009/2999. The Provision of Services Regulations come into force on 28 December 2009.
(4) S.I. 2005/42. Those Regulations were amended by S.I. 2007/2502 and S.I. 2009/1809.

- (b) after the definition of “prescribed fee” insert—
 - ““relevant electronic facility” means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009(5) or any facility established and maintained by a licensing authority for the purpose of receiving applications, notices or representations electronically;”;
- (c) in the definition of “second appointed day” for “; and” substitute “.”;
- (d) omit the definition of “standard scale”.

Applications, notices and representations

- 4. For regulation 21 substitute—

“Applications, notices and representations

21. Subject to regulations 21A and 21B an application, notice or representations (other than representations of the kind referred to in section 41B(2)(b)(i) or 86B(2)(b)(i)) must be given in writing.”.

- 5. After regulation 21 insert—

“Applications and notices given by means of relevant electronic facility

21A.—(1) The requirement in regulation 21 is satisfied in relation to an application or notice if the information comprising the application or notice is transmitted to the recipient by means of a relevant electronic facility.

(2) A plan or other document that accompanies an application or notice, and which is capable of being transmitted by means of a relevant electronic facility, may be transmitted to the recipient by means of that facility, together with the application or notice.

(3) Subject to paragraph (4) where information comprising an application or notice is transmitted by means of a relevant electronic facility the application or notice is to be taken as given at the time the information comprising it, and any accompanying plan or document, becomes accessible to the recipient by means of that facility.

(4) But an application or notice that is required to be accompanied by a fee is not to be taken as given until the fee has been received by the recipient.

Applications, notices and representations given by other electronic means

21B.—(1) In the case of an application for review under section 51 or section 87, or of representations, the requirement in regulation 21 is satisfied if—

- (a) the information comprising the application or representations is—
 - (i) transmitted by electronic means (other than a relevant electronic facility),
 - (ii) capable of being accessed by the recipient,
 - (iii) clear and legible in all material respects, and
 - (iv) capable of being—
 - (aa) read and reproduced in written form, and
 - (bb) used for subsequent reference

by the recipient;

- (b) the person to whom the application is to be given, or to whom the representations are to be made has agreed in advance to the use of electronic means for that purpose; and
- (c) forthwith on sending the information comprising the application or representations by electronic means the application is, or the representations are, given to the recipient in writing.

(2) Paragraph (1)(c) does not apply in respect of an application or representations if the recipient has agreed in advance that the application or representations need not be given in writing.

(3) A plan or other document that accompanies an application given or representations made pursuant to paragraph (1) may be given by electronic means, provided that the requirements of that paragraph are met in relation to the information contained in the plan or document.

(4) Subject to paragraph (5), where information comprising an application or representations (“the information”) is transmitted by electronic means pursuant to paragraph (1) the application is, or the representations are, to be taken as given at the time the requirements of paragraph (1)(a) and (b) are satisfied with respect to—

- (a) the information, and
- (b) any accompanying plan or document.

(5) But an application or notice that is required to be accompanied by a fee is not to be taken as given until the fee has been received by the recipient.”.

Plans

6. For paragraph (2) of regulation 23 substitute—

“(2) The information contained in the plan must be clear and legible in all material respects.”.

Advertisement of applications: minor variations

7. In regulation 26A—

- (a) the second subparagraph numbered (b)(v) is renumbered (b)(vii);
- (b) the second subparagraph numbered (b)(vi) is renumbered (b)(viii);
- (c) in paragraph (3) omit “the day on which”.

Notice to responsible authority

8.—(1) For regulation 27 substitute—

“Notice to responsible authority: applications made by means of relevant facility

27.—(1) Where—

- (a) an application to which this regulation applies is made by means of a relevant electronic facility, and
- (b) any plan or document required to accompany the application is given by means of that facility,

the relevant licensing authority must, no later than the first working day after the application was given to the authority, give notice of the application to each responsible authority by giving each authority a copy of the application together with any accompanying plan or document.

(2) This regulation applies to an application for—

- (a) a premises licence under section 17;
- (b) a provisional statement under section 29;
- (c) variation of a premises licence under section 34;
- (d) minor variation of a premises licence under section 41A
- (e) a club premises certificate under section 71;
- (f) variation of a club premises certificate under section 84;
- (g) minor variation of a club premises certificate under section 86A.”.

(2) After regulation 27 insert—

“Notice to responsible authority: other cases

27A. In the case of—

- (a) an application of a kind referred to in regulation 27(2) made otherwise than as described in regulation 27(1), or
- (b) an application for a review under section 51 or section 87,

the person making the application must give notice of the application to each responsible authority by giving each authority a copy of the application together with its accompanying plan, document or other information on the same day as the day on which the application is given to the relevant licensing authority.”.

Notice to chief officer of police etc.

9. In regulation 28—

- (a) in paragraph (1) for “In” substitute “Subject to paragraph (1A), in”;
- (b) after paragraph (1) insert—

“(1A) But where an application or notice is given by means of a relevant electronic facility the relevant licensing authority must (and the person making the application need not) give a copy of the application or notice, together with its accompanying documents (if any) to the chief officer of police on the first working day after the application was given to the authority.”;

(c) for paragraph (3) substitute—

“(3) A person who makes an application of the kind referred to in paragraph (2)(b) must give the designated premises supervisor (if any) a copy of the application together with its accompanying documents (if any) on the same day as the application is given to relevant licensing authority.”.

Notices etc given by licensing authority

10. After regulation 39A insert—

“Notices given by licensing authority: applications given by means of relevant electronic facility

39B.—(1) Where a notice or statement to which this regulation applies is given by a relevant licensing authority in connection with an application made in accordance with regulation 21A, the notice must be given by means of the relevant electronic facility through which the application was transmitted to the authority.

(2) This regulation applies to—

- (a) a notice given to an applicant under section 23(1)(a)(i) or (3)(a), 36(1)(a) or (4)(a), 39(4)(a), 41C, 44(7), 45(1)(a), 50(6)(a), 77(1)(a)(i) or (3)(a), 86(1)(a) or (4)(a) or 86C;
- (b) a statement issued to an applicant under section 31(2) or (3)(c);
- (c) a notice given to a club under section 63(3).”.

1st December 2009

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (S.I. 2005/42) (“the 2005 Regulations”).

The purpose of the amendments is to ensure that the 2005 Regulations are compatible with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (“the Directive”).

The Directive requires that all procedures and formalities concerning access to, or the exercise of, a service activity may be completed at a distance by electronic means, through a single point of contact and with the relevant competent authorities. The single point of contact in the United Kingdom is the Electronic Assistance Facility (“EAF”) referred to in regulation 38 of the Provision of Services Regulations 2009 (S.I. 2009/2999). The relevant competent authorities as regards the Licensing Act 2003 (c. 17) (“the 2003 Act”) are licensing authorities.

Regulations 4 and 5 of these Regulations substitute a new regulation 21, and insert new regulations 21A and 21B into the 2005 Regulations. The effect of these amendments is to enable an application or notice (and any accompanying plan or other document) given to a licensing authority under Part 3 or Part 4 of the 2003 Act to be given “in writing” by means of a “relevant electronic facility”. (Such a facility is defined in the amendment made by regulation 3(a) to mean the EAF, or any facility established and maintained by a licensing authority for the purpose of receiving applications, notices or representations electronically).

Applications or notices so given are to be regarded as given when the information comprising them becomes accessible to the recipient by means of the facility or, if a fee is payable, at the time the payment is received.

An application for review under section 51 or 87 of the 2003 Act, or representations (and any accompanying plan or document) can be given “in writing” if the information comprising it or them satisfies the conditions in the new regulation 21B(1)(a) to (c). The application or representations are to be taken as given when the requirements of regulation 21B(1)(a) and (b) are met, or (if applicable) the appropriate fee is paid. Reviews and representations are treated separately from other processes under the 2003 Act, as they are not normally initiated by the service provider.

Regulation 6 replaces the existing requirement that plans submitted with applications for premises licences or club premises certificates be drawn in the standard scale unless the licensing authority agrees in writing to an alternative scale. The new paragraph (2) in regulation 23 of the 2005 Regulations provides that the plan must be clear and legible in all material respects. The definition of “standard scale” is accordingly omitted from regulation 2(1) of those Regulations.

To ensure compatibility with the Directive’s requirement for a single point of contact, new regulations 27 and 27A (introduced by regulation 8) provide that where certain applications are made by means of a relevant electronic facility, the licensing authority (rather than the applicant) must give notice of the application to each of the “responsible authorities” as defined in Part 3 or 4 of the 2003 Act. For applications made by other means, and in the case of reviews, the applicant must give the required notice.

For applications of which notice is required to be given to the police (but not the other responsible authorities), regulation 28 of the 2005 regulations is amended so that the licensing authority, rather than the applicant, is required to give the notice in cases where the application is submitted by means of a relevant electronic facility.

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Regulation 10 inserts a new regulation 39B into the 2005 Regulations, which provides that certain notices given (by a licensing authority) in connection with applications made through a relevant electronic facility must themselves be given through that facility.

An impact assessment in respect of the Directive is annexed to the Explanatory Memorandum to the Provision of Services Regulations 2009 and is available alongside that instrument on the OPSI website (www.opsi.gov.uk). A separate impact assessment has been produced in respect of these Regulations, and is available alongside them on that website.