

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).

Applications are encouraged online via Scarborough Borough Council’s website (www.scarborough.gov.uk). Applications made online are automatically forwarded to the Police on your behalf.

Who do I serve the application on?

If you choose to post your application, the original with payment should be sent to Licensing Services with a copy to North Yorkshire Police:

Licensing Services
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

Chief Officer of Police
North Yorkshire Police
Alcohol Licensing Unit
Fulford Road
York
YO10 4BY

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.