



## **GUIDANCE SHEET**

### **FREQUENTLY ASKED QUESTIONS FOR LICENSEES**

How the Licensing Act 2003 affects you as a licensee in Allerdale Borough Council area

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## **Why is the Licensing Act 2003 important to me as a licensee?**

The Act is a major reform of the UK's licensing laws. There are three important ways it may affect you:

1. Alcohol licensing will be carried out by the local council instead of the court.
2. The sale of alcohol must be authorised by the holder of a 'Personal Licence'.
3. All existing licenses
  - to sell alcohol (liquor licence);
  - to provide public entertainment (music and dancing, theatre and cinema licences);
  - to sell hot food and drink after 11pm (late night refreshment house licence).

must be converted into 'Premises Licences'.

## **As an existing licensee, do I need to do anything?**

If you want to continue to operate after the second appointed day, which signifies the end of the Transition period, you will need to apply to convert your existing licence into the new style premises licence and have it granted by the second appointed day in November 2005. The following licences can be converted:

- A Justices' Licence.
- A Canteen Licence.
- A Public Entertainment Licence (under schedule 12 to the Local Government Act 1963).
- A Theatre Licence (under the Theatres Act 1968).
- A Late Night Refreshment Licence (under the Late Night Refreshment Houses Act 1969).
- A Public Entertainment Licence outside London (under schedule 1 to LGMP Act 1982).
- A Cinema Licence (under the Cinema Act 1985).

You will need to apply to the Council to convert your existing licence into a Premises Licence in the six-month period beginning on 7 February 2005. A fee will be payable for the application, which is set by Central Government and not the Council. These fees can be found in the table at [www.allerdale.gov.uk](http://www.allerdale.gov.uk).

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If you sell alcohol you will also need to apply for a Personal Licence (**see below**).

## **When will I have to do something to convert my licence?**

**The process will start on 7 February 2005.**

You must submit an application to the Council within six months from 7 February, which is the first appointed day (FAD) of the transition period. Application forms are available to download from the council website [www.allerdale.gov.uk](http://www.allerdale.gov.uk) or from the licensing office on Tel:01900 326509.

The Government will announce the second appointed day (SAD) in due course, which we expect to be nine months later in November 2005. On the SAD the new licensing regime will come into effect. The nine months between the FAD and SAD is known as the transition period, when the Council must deal with all conversion applications. Remember that you can only convert your current licence between 7<sup>th</sup> February and 7<sup>th</sup> August 2005.

All alcohol licences, public entertainment licences and some\* licences for the provision of late night refreshment will have to be converted to 'Premises Licences'. It will also be possible to apply to vary those licences.

**Any licences issued under the old regime will be invalid** from the second appointed day unless the council has converted them into a Premises Licence.

*\*It is the supply of hot food or hot drink to the public between 11pm and 5am that is licensable.*

## **Where can I find out more about the Act and what I need to do?**

A full copy of the Licensing Act 2003 can be found on the HMSO's website at <http://www.legislation.hmso.gov.uk/acts/acts2003/20030017.htm>. You can also go to the Department of Culture, Media and Sport's (DCMS) website at <http://www.dcms.gov.uk>, where there is a specific section on alcohol and entertainment. The DCMS took responsibility for alcohol and entertainment licensing policy from the Home Office in 2000.

The Council has published a Statement of Licensing Policy setting out how it intends to discharge its responsibilities under the new legislation. The Policy has been widely consulted on and was formally approved by full Council on 15<sup>th</sup> December 2004. The policy can be viewed at [www.allerdale.gov.uk](http://www.allerdale.gov.uk)

Application forms and guidance will be on the council website at [www.allerdale.gov.uk](http://www.allerdale.gov.uk).

## **What is Allerdale Borough Council doing to accommodate the change?**

We are busy:

- preparing for the conversion of the 400+ Premises Licences and 700+ Personal Licences that will need to be converted within the transition period.

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- ensuring the successful adoption of our Statement of Licensing Policy.
- training staff, council members and keeping current licence holders up to date with the requirements of the Act.

## **What will happen to my existing Licences?**

The period between "the first appointed day" and "the second appointed day" is called the **transition period**. This will be a period of approximately nine months starting from 7 February during which time all existing licences will have to be converted. Applicants will need to apply to the Council within the first six months of this period for the new style licences if they wish to continue with their licensing operations.

**On the second appointed day, the new licences will become legally effective and without them an applicant cannot continue to trade.** During the transition period the old licensing regime will still be in existence as **the new style licences do not become operative until the second appointed day.**

## **What will happen to fees already paid for existing Licences?**

### **Public Entertainment, Cinema, Theatre and Late Night Refreshment House Licences**

Your current licence needs to be valid right up to the end of the transition period. The new 'Premises' Licences do not operate until the transition period has finished. As soon as Allerdale Borough Council knows when the dates of the change will be, licences will be granted for a period up to the transition end. A charge will be made based on the length of time the licence will operate and the cost of administration, so the full annual licence fee may not be payable in all cases, once the transition dates are known.

### **Magistrate's Court Licences**

The **fees you paid to the magistrate's courts** go directly to the Lord Chancellor's Department. As a result, it is unlikely that you will be able to recover any fees. If you would like any more information about this, we suggest that you contact the Magistrate's Court directly.

## **Will I have to advertise my conversion application?**

Advertising is only necessary for new or variation applications. You will therefore not need to advertise if you are applying to convert your existing licence.

## **Will the conversion process affect the way I operate?**

The **conditions** that will be put on your new licence will **reproduce the conditions already on your existing licence.**

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Where the new licence authorises the **supply of alcohol**, the new licence will refer to the person named in the application as the Designated Premises' Supervisor for premises that sell alcohol.

**The exemption in the current Licensing Act, which allows up to two performers in a bar without the need for a Public Entertainment Licence, has been removed by the new legislation.** The new provisions permit premises licensed to sell alcohol to have un-amplified music or dance performances from 8am to midnight. If you currently provide live music under the exemption and wish to continue to do so after the second appointed day you will need to apply to vary your existing licence.

Some theatre licences have an exemption from the requirement to hold a Justices' Licence. This will cease from the second appointed date and holders should apply for a Premises Licence, including the sale of liquor in their licensable activities.

## **What is a Variation?**

A variation has the same meaning as previously but there is now a distinction between major and minor variations. A **major variation** would include a change to the hours of operation, an increase in the capacity of the premises, a change to the way the premises are to operate, varying an existing condition etc. A **minor variation** would include applications to change the name or address of someone named in the licence or an application to vary the licence to specify a new individual as the Designated Premises Supervisor.

**All premises that sell alcohol must specify an individual in their application as the Designated Premises' Supervisor.** There is nothing to prevent an individual who holds a Premises Licence from also being specified as the premises supervisor.

## **How often can I apply for variations and will changes be restricted to certain times?**

If you wish to apply for a variation of your current licence to come into effect on the second appointed day, you must apply to the Council for that variation at the same time as you make your conversion application.

After the transition ends you can apply for other variations. Every time a variation application is made there is likely to be a fee involved. You will also need to follow the procedural requirements.

The Licensing Act 2003 does not specify a set time when you must apply for a variation once the transition period is over. You will be able to apply for these at any time but there will be a fee charged for each application.

## **What happens after I have submitted my Application?**

From 7 February there will be a **six-month window from the first appointed day for you to apply to the Council for conversion of a licence.** The existing licensee may apply or the licensee can give their consent for someone else. In the

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case of a pub for example, the brewery may apply on their behalf. New premises licenses do not need to be held by individuals, companies can hold them.

The application to convert a Premises Licence must specify certain details, such as:

- the existing licensable activities (existing or certified copy of licence to be produced); and
- who is to be the Designated Premises Supervisor\* (if the existing licence authorises the supply of alcohol).

However, there is no requirement when an application has been made to convert to a **Club Premises Certificate** for there to be a Designated Premises Supervisor.

**The applicant must give a copy of the application to the local police within 48 hours of making it.** If the police believe circumstances have changed sufficiently that the conversion could lead to an increase in crime or anti-social behavior, they must inform the Council and applicant. The police will have 28 days from the date they received the application to do this.

If there is **no such objection from the police** the Council must grant the application.

**If the police do object there must be a hearing** and the Council must consider the application in the light of that objection.

**If the Council fails to determine the application for conversion within two months of its receipt it will automatically be treated as granted.**

A person who applies to **convert an existing licence may at the same time apply for a variation of the converted licence.** The Council may only grant such applications for variations where there has been a successful conversion.

**Where a variation application is not determined within two months it will be treated as refused.**

In the case of a variation application, if there are no relevant representations (i.e. objections) from either a responsible authority or interested party, the application must be granted and there is no requirement for a hearing. If a relevant representation is made, there must be a hearing for the Council to consider that representation. The Council may refuse the **variation application** if it considers that this is necessary to promote the licensing objectives. There is a right of appeal to the Magistrate's Court.

*\*The person in day to day charge of the premises who must also be a personal licence holder.*

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## How much will it cost me to comply with the Act and what fees will be applied?

- There will be an **initial conversion fee** for those premises that already hold a Justices' On/Off Licence or a Public Entertainment or Late Night Refreshment House Licence.
- New/Variation and Transfer Applications and Temporary Events will have a fee.
- Every year you will pay an **annual maintenance fee**.

**The fee structure was published on 21<sup>st</sup> January 2005.** It is based upon the non-domestic ratable value of the premises and is divided into five bands (A to E). These fees can be found in the table at [www.allerdale.org.uk](http://www.allerdale.org.uk).

Additional costs may be incurred through advertising and the use of solicitors or other advisers.

## Is there anything else you can tell me more about Personal Licences?

A **Personal Licence** is only required where alcohol is to be supplied. A Personal Licence will only authorise its holder to supply alcohol where there is a Premises Licence (and not just a Club Premises Certificate). A Personal Licence is issued for 10 years.

There is a general presumption that **holders of existing Justices' Licences will automatically be granted a Personal Licence**. However, the Police can object to the granting of a licence if they believe that granting one could lead to an increase in crime or anti-social behaviour.

If the Authority fails to determine an application for a Personal Licence within three months of receipt the application will automatically be considered as granted.

## Who will be responsible for applying for the Premises Licence?

An application for conversion into a Premises Licence may be made either by the person who holds the existing licence or another person or body, as long as the original licensee provides his consent. This consent must be given in a specified form.

## Is it true that 24-hour drinking will be available everywhere?

**No, this is not true.**

There will no longer be set licensing hours for the sale of alcohol under the new legislation. Licensees can therefore request longer opening hours, up to 24-hour opening, when they apply for a variation. But, if they do so, **they will be required to complete an Operating Schedule which will be copied to responsible authorities**. This schedule will require detailed information about how the premises will operate such as capacity, opening and closing times, the licensable

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activities and how the operator will address the licensing objectives. This will enable any responsible authority or interested party to assess whether the steps to be taken to promote the licensing objectives are satisfactory. The application may then be the subject of representations, from the statutory authorities or from interested parties such as local residents. If that happens, a hearing will be held and the Council's Licensing Committee or one of its Sub-Committees will decide whether or not the application should be granted.

Only if there are no representations, will it be the duty of the Authority to grant the licence subject only to those conditions that are consistent with the operating schedule and the mandatory conditions referred to in the Act.

## How can I object to an application?

The only persons who can object to a straightforward application to **convert** any of the existing licences referred to above into a Premises Licence, during the transition period, are the police. **(Note the difference between conversion and variation)**. The rationale behind this is that all existing licences and certificates have already been approved by either the Licensing Justices', the Magistrates' Courts or a local authority licensing committee.

Applications for a **variation** of a Premises Licence or a Club Premises Certificate will need to be advertised by the Applicant. If an interested party or responsible authority receives representations within the set period, and they are not in the opinion of the Council frivolous or vexatious, **then there must be a hearing**. However, these representations must be considered by the Council to have an impact on the promotion of one or more of the licensing objectives.

The Act defines an **interested party** as persons:

- living in the vicinity of the premises;
- a body representing persons living in that vicinity;
- a person involved in a business in the vicinity; or
- a body representing persons involved in such businesses.

**Responsible authorities** are defined as the police, fire authority, the authority responsible for environmental health and pollution, planning, the Health and Safety Executive and the body responsible for the protection of children from harm.

**The regulations**, which are yet to be published, will provide further information about this. If you require any further information it will be available closer to the time when you will be able to object.

## Why is this change happening?

The changes are coming into effect as a result of the Licensing Act 2003 passed by Parliament last July. The Act modernises and integrates the alcohol, public entertainment, theatre, cinema, night café and late night refreshment house

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licensing schemes in England and Wales. The **purpose of the new system** is to promote **four fundamental objectives**.

1. The prevention of crime and disorder.
2. Public safety.
3. The prevention of public nuisance.
4. The protection of children from harm.

The new licensing system will mean that the sale of alcohol, the provision of public entertainment and the sale of hot food and drink after 11pm will be authorised through Premises Licences, Personal Licences, Club Premises Certificates and Temporary Event Notices.

The Licensing Act 2003 is different from the existing legislation in that it:

- does not prescribe the days or the opening hours when alcohol may be sold by retail, for consumption on or off the premises; OR
- specify when other licensable activities may be carried on.

Instead, applicants for a Premises Licence or Club Premises Certificate will be able to apply for the days and hours during which they wish to carry on licensable activities. **The licence will be granted on those terms unless the Council receives representations (objections) or the application does not comply with Allerdale Borough Councils' licensing policy.** The Council will then consider granting or rejecting the application or modifying the conditions for the purpose of promoting the licensing objectives.

## What will happen to my existing Gaming Permit?

Your existing Gaming Permit will have been granted by the Magistrates Court and is valid for three years. This is under the Gaming Act 1968 and the validity of the permit is not affected by the Licensing Act 2003.

Should your permit expire, or you wish to apply for a transfer before the second appointed date in November 2005, you should apply to the Clerk to the Justices as per the present system.

All new, renewal or transfer applications after the second appointed date should be sent to Allerdale Borough Council.

**Please note:** This information is accurate at the time of posting but may be liable to change. The information should not replace any independent advice you receive through your solicitor or other legal advisor.