

Licensing Act 2003

Clubs Fact Sheet



Registered members clubs will need to apply to convert their registration to a club premises certificate which replaces current cub registration but preserves its special character. Applications to convert the existing club registration must be made within six months of the first appointed day (7 February 2005) and the conversion will give a certificate on the same terms as the existing licence unless there are police objections on the grounds of crime prevention.

Qualifying Clubs

Qualifying clubs are entitled to certain benefits which include:

- The authority to supply alcohol to members and sell it to guests without the need for any member or employee to hold a personal licence
- The absence of a requirement to specify a designated premises supervisor
- More limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public.

The certificate authorises qualifying clubs to use club premises for qualifying club activities which are:

- The supply of alcohol by or on behalf of a club to a member for consumption on the premises
- The sale by retail of alcohol by or on behalf of a club to a guest of a member for consumption on the premises
- The provision of regulated entertainment by or on behalf of a club for its members and guests

The new certificate is of unlimited duration but there will be an annual inspection fee. Details of the fees are included with the application pack.

The Act defines a 'qualifying club' as

- having an interval of at least two days between a member's nomination/application for membership and their admission
- having at least 25 members
- and being established and conducted 'in good faith'.

In deciding whether a club is conducted 'in good faith' the following matters are taken into account:

- any arrangements restricting the club's freedom of purchase of alcohol
- any arrangements where any financial gain arising from the carrying on of the club does not benefit the club as a whole or is not for charitable, benevolent or political purposes
- the arrangements for giving members information about the finances of the club and the accuracy of financial information kept

- the nature of the premises occupied by the club.

Members and Guests

Qualifying clubs are able to admit their own members and guests as well as associate members and their guests when qualifying activities are being carried on without compromising the use of their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.

The Department of Culture, Media and Sport (DCMS) has stated that the Licensing Act does not define a “guest”; an “associate member” is merely one form of guest included in the 2003 Act for the sake of clarity. A “guest” can be served in the club as long as they are a “guest” defined in the club’s own rules. This gives the club discretion as to the creation of its own rules defining who will be considered as a “guest”, the only restriction that the club must be run ‘in good faith’ as a genuine members’ club – that it must not become a bar open to the general public. The Licensing Act 2003 provides for the licensing authority to decide whether the club is operating ‘in good faith’.

The Minister with special responsibility for licensing, Richard Caborn, has further elaborated on the status of visitors to clubs in an article in Golf Monthly in May 2004 saying that the Licensing Act 2003 “gives clubs the flexibility to invite a broad range of people into their premises as ‘guests’”. A visitor can be served in the clubhouse bar as long as they are a ‘guest’, as defined in the club’s own rules. The Act does not tell clubs what to put in their rules – that is rightly a matter for them. It is up to the club to consider whether its rules should require ‘guests’ to be physically signed in by a member or whether some other requirement such as payment of a green fee could apply. The only restriction is that the club must be run ‘**in good faith**’ as a genuine members’ club (as is the case under current law) and must not become, in effect, a bar open to the general public”.

A number of clubs have provision in their rules for their clubs to be open to the public for up to twelve occasions in the year. Whilst under the existing regime clubs could sell alcohol to persons attending these functions under the provisions of their Club Registration Certificate it will **not** be the case in the future. If clubs wish to retain this ability to have ‘open’ events they will have to consider their options. The two options they will have are either to run these events under a Temporary Event Notice (further information below) or to apply for a Premises Licence.

Clearly clubs will need to scrutinise their rules and operating practices with, we would suggest, legal advice, but it does not seem, at this stage, that the new legislation will make that much difference to the day to day operation of clubs.

Entertainment

There has not been a need for clubs to have entertainment licences for members or guests but that now becomes regulated entertainment so clubs will need to apply for a variation to their newly-converted certificate if they wish to continue with entertainment for members. As mentioned above a number of clubs have provision in their rules for their clubs to be open to the public for up to twelve occasions in the year and as a result some clubs have public entertainment licences to cover those functions – this licence will also need to be converted and included in your application.

Temporary Event Notices (TENs) – Club Open Events (Little Ship Rule)

There is a way, under the new Act, that this can continue without the club having to apply for a full premises licence with a designated premises supervisor and that is through Temporary Event Notices or TENs. The DCMS guidance advises “temporary event notices may be given in respect of club premises covered by club premises certificates by non personal licence holders. This means, for example, that a club which under its certificate is normally only permitted to supply alcohol to its members and their guests may during the period covered by a TEN (subject to the limit on numbers and occasions) under the authority of the notice and the responsibility of the individual giving the notice (the premises user) admit members of the public and sell alcohol to them as well as provide regulated entertainment. Only twelve such notices may be given in respect of the same club premises in any calendar year and the maximum aggregate duration of 15 days will also apply.”

TENs allow anyone who is not a personal licence holder to apply for a licence to hold an event involving licensable activities (such as sale of alcohol or the provision of regulated entertainment) which lasts no longer than 96 hours and is for no more than 499 persons. Non personal licence holders may make up to five applications per year (which means that a club will need to give consideration to the persons who might apply – perhaps members of the bar committee) and no premises may be used more than twelve times in a calendar year.

Some larger clubs might decide that they would like to apply for a premises licence in place of or in addition to the club premises certificate. This would mean that the club would also need to have a designated premises supervisor who was a personal licence holder. This would allow the club to admit members of the public but they would need to take care that they did not become a bar generally open to the public – this could have an impact on their status as qualifying club being run ‘in good faith’.

Clubs will need to give some thought, if they have not already, as to how they approach conversion of their existing certificates and would do well to seek some legal advice. The advice in this document should not be regarded as a definitive statement of the law – it is our current interpretation only. We will endeavour to keep you up to date with further advice coming from the Government and will update our website as and when information comes to us. Keep in touch by logging on to www.eastdevon.gov.uk or contact the Licensing Team at the Council Offices, Knowle, Sidmouth, EX10 8HL, Telephone 10395 517410 or email licensing@eastdevon.gov.uk.