

The Licensing Act 2003, which came into force in November 2005, has introduced a number of changes. Annex A detailing the various licences and when they are available has been substantially amended and reflects the new legal position, but the main text is not currently accurate in a number of cases, specifically in paragraphs 6, 7, 13, 15, 36, 37, 69 and 70. Trustees should consult their own legal advisers if in any doubt. A new text is in preparation

CC27 - Providing Alcohol on Charity Premises

(Version November 2002)

Contents	Page
What is this guidance about?	3
Meaning of words and expressions used	3
General considerations	5
What is the legal position?	5
Can all charities provide alcohol on their premises?	6
Restrictive covenants	7
Restrictions in the governing document	7
Opposition to the provision of alcohol on charity premises	7
Legal and practical difficulties	8
The Commission's position	9
Authorities for the sale of alcohol	10
Supplying alcohol on behalf of a charity	10
The supply of alcohol in a way that is connected with the furtherance of a charity's objects	10
The supply of alcohol in a way which is not connected with the furtherance of a charitable purpose	12
The need for separation	13
Options	14
An independent club	14
Can charity premises be used by the club?	14
Will the club need an authority for the provision of alcohol?	15
What are the advantages of using the independent club option?	16

A trading company owned by the charity	16
What are the advantages of using a trading company?	18
An independent company on commercial terms	19
Options for separation	20
Occupational licence	20
Lease	20
What should a lease or licence contain?	22
Taxation	23
Taxation of the profits of a bar business run by an independent club	23
“Small trading” tax relief	25
Further information on tax	26
Value Added Tax	26
Rates	28
Annex A	29
Types of licence or other authority for the sale or supply of alcohol	29
A justices’ on-licence	29
An occasional licence	29
An occasional permission	30
A theatre licence	30
Club registration certificate	31
Annex B	34
Useful addresses	34
Significant changes from the previous version of this guidance	35

What is this guidance about?

1. Selling alcohol from charity premises either to improve facilities provided by the charity or as a ready source of funds can be an attractive proposition. Nevertheless, the sale of alcohol is a particularly complex subject. It poses serious legal and practical problems, and requires careful thought.

2. This guidance contains guidelines and recommendations which, if followed, are intended to ensure that trustees act within the law. In this context “law” means both legislation and rules imposed by the courts. Trustees of charities which are already selling alcohol from their premises will need to read this guidance carefully to ensure that they are acting within this framework. We recommend that trustees should take specialist professional advice to ensure that they are not acting unlawfully. There are many organisations, some of which are charities, which can provide this type of advice (see Annex B at the end of this guidance for useful addresses), as well as firms of solicitors specialising in this area. Trustees may also contact us for further advice.

Meaning of words and expressions used

3. In this guidance:

Trustees means **charity trustees**. Charity trustees are the people who, under the charity’s governing document, are responsible for the general control and management of the administration of the charity. In the charity’s governing document they may be called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title. The term does not include holding or custodian trustees.

Governing document means any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commissioners, or other formal document.

Restrictive covenant means a restriction which has been placed on the land by the person who sold it. The restriction is usually concerned with how the land (and any buildings on it) may be used. Any such restriction is often (but not always) found in the title deeds of the property concerned (see paragraphs 9 and 10).

Authority means any form of licence or authority (eg an occasional permission) for the supply of alcohol which has been granted by the appropriate licensing authority. Paragraph 7 and Annex A give further details.

Bar business means any third party which supplies alcohol on the charity's premises.

Title deed means any conveyance, lease, deed or land certificate which details the terms and conditions upon which the property is held.

Must or **need to** are used to refer to actions that the trustees, or their agents or employees, have to take by law.

Where we use terms such as the trustees **should** or we **suggest, recommend** or **advise** we are referring to actions which the trustees, their agents or employees could take, and which we consider to be good practice, but which are not legal requirements.

4. It is not a charitable purpose to provide the services of a pub or social club (ie a members' drinking club). This is so even under the particular provisions of the Recreational Charities Act 1958 (except in the case of certain miners' welfare organisations). For that reason an organisation which has that as its whole, or main, purpose cannot be a charity. This does not mean, however, that there are no circumstances under which a charity may sell alcohol from its premises. The trustees will, however, need to consider very carefully the extent to which they can do this.

5. In all cases where it is proposed to sell alcohol from charity premises, trustees should first consult their professional advisers, to ensure that all legal requirements relating to the sale are properly recognised. This is true whether the sale is to be directly by:

- the trustees;
- charitable organisations that use the premises; or
- non-charitable bodies that hire the premises.

6. The provision of alcohol is strictly controlled by the licensing laws (the Licensing Act 1964 (as amended) and the Licensing (Occasional Permissions) Act 1983). There is nothing in these laws to prevent alcohol being given free of charge to people on charity premises. For instance, people attending a fund-raising or social event, may be given a free glass of wine provided that the cost is not included in any admission or indirect charges (eg programme sales)

7. Authorities to supply alcohol are granted by the local licensing justices or magistrates' court. So far as charities are concerned, the relevant types of authority are:

- a justices' on-licence;
- an occasional licence;
- an occasional permission;
- a club registration certificate (in certain circumstances); and
- a theatre licence (this is not a liquor licence, but it does permit the sale of alcohol in certain circumstances).

8. All of these are described in more detail in Annex A. The implications of holding a licence are described at paragraph 15 below.

Can all charities provide alcohol on their premises?

9. No. Some charities are expressly precluded from providing alcohol from their premises, either by a restrictive covenant, which is usually in their property's lease or freehold title deeds, or by a restriction in their governing document. The title deeds and governing document need to be studied carefully to see if any such restrictions are in force. Where a charity occupies property under a management service agreement or other type of licence, the trustees will need to liaise with the landlord regarding any proposal to provide alcohol. The trustees should consult a specialist professional adviser, if they have any doubts regarding their terms of occupation.

Restrictive covenants

10. If the restriction is in the form of a covenant in a lease, or a restrictive covenant in the freehold title deeds of a charity's property, we have no power to change or release it. The trustees should first try to make an arrangement with the person who has the benefit of the covenant. This may be the landlord or another landowner, but sometimes it can be difficult to find out who this is. An application may in the case of a covenant affecting freehold land be made to the Lands Tribunal to release the covenant. This can be a long and complex process and trustees will need to take appropriate professional advice.

Restrictions in the governing document

11. If the governing document of the charity contains a restriction on the sale or consumption of alcohol, then it may be possible for us to make a Scheme removing the restriction. This can be done only if the trustees are able to show that, without the removal of the restriction, it will not be possible to further the purposes of the charity as suitably and effectively as possible.

Opposition to the provision of alcohol on charity premises

12. Occasions may occur when opposition to the sale or consumption of alcohol is made. For example, complaint may be made by:

- those living nearby who fear disturbance;
- people using the charity's facilities who disapprove of the sale or consumption of alcohol in general;

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- those who fear that other activities may be adversely affected or displaced; or
 - landlords of local public houses who regard the proposal as unfair competition.

Legal and practical difficulties

13. Even where there are no restrictions on the charity regarding the sale of alcohol, there can still be legal and practical difficulties to be considered. If the trustees themselves are going to sell alcohol from their premises, or are going to allow such sale, they may need to consider the following points:

- Would the sale of alcohol involve a change of use of the charity's premises for planning purposes, requiring an application for planning permission from the local authority?
- Would the sale put at risk any existing charity rating relief available in respect of the premises? Charity rating relief requires that the premises should be used wholly or mainly for charitable purposes - the sale of alcohol may not constitute such use.
- If alterations are required to the structure of the buildings to accommodate a bar, would the alterations require building regulations or Fire Authority approval?
- How would the sale of alcohol from the charity's premises, or its storage on those premises, affect the charity's insurance?

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- If food as well as alcohol is to be supplied on five or more occasions in any five week period, the premises may need to be registered with the local authority under the Food Premises (Registration) Regulations 1991.
 - The sale of alcohol is trading. This may give rise to a liability to tax and VAT (see paragraphs 22-24 and 58-71 below).
 - Is it possible to ensure:
 - that children under the age of 14 are not given unauthorised access to the bar area (s.168 Licensing Act 1964); and
 - that nobody under the age of 18 is able to purchase or consume alcohol on the premises?

The Commission's position

14. Trustees who want to sell alcohol should consider carefully whether they have the necessary power to do so and whether it will be in the best interests of the charity. We are particularly concerned that charity property should not be put at risk. Where the charity is to provide alcohol in a way which is ancillary to its objects, its trustees must be satisfied that this is really furthering the objects of the charity in the manner outlined in paragraphs 17-24 below. We will not seek the separation of such a business from the charity. However, trustees who are concerned at the possibility of incurring the liabilities mentioned in paragraphs 22-23 below, should not hesitate to discuss the question of separation with their professional advisers and/or ourselves.

Supplying alcohol on behalf of a charity

Authorities for the sale of alcohol

15. It is important to note that the individual trustee, or officer, of the charity who has been granted an authority for the sale of alcohol is the licensee. As such, he or she is responsible for complying with the terms of that authority and with certain statutory obligations (eg not selling alcohol to people under the age of 18). A breach of the authority or of any of the provisions of the Licensing Act 1964, may result in the licensee facing a criminal prosecution. The trustees as a whole should act together to fully support the licensee in fulfilling these obligations.

16. Trustees must, in all cases, ensure that they have the appropriate authority under licensing laws to sell alcohol (see Annex A).

The supply of alcohol in a way that is connected with the furtherance of a charity's objects

17. In certain circumstances it is permissible for trustees to sell alcohol in a manner that is connected with the furtherance of their charitable objects (ie as an ancillary activity) if they hold an appropriate authority. However, even if there is a connection with the furtherance of their charitable objects, alcohol can be sold only:

- if the premises from which the alcohol is to be sold are not subject to covenants or planning or other restrictions which prohibit such use; and
- if the accommodation of the bar does not prevent consideration from being given to the use of the premises in other ways for the furtherance of the charity's objects, whenever such consideration is appropriate.

18. The sale of alcohol is an ancillary activity if it is done simply for the purpose of refreshing people who are on the charity's premises to take part in a recreational, educational or other charitable (or fund-raising) activity. For example, where a village hall or community association provides facilities to play games and sports, properly provided facilities for the purchase of alcohol may be made available for the participants or spectators, provided that:

- the bar is open only when the premises are in use for those activities; and
- only participants and spectators use the bar facilities.

19. Similarly, refreshment may be made available (through the sale or provision of alcohol during licensed hours) for those who, for example, visit museums or attend theatrical or other performances in charitable theatres, village halls or community association premises.

20. If the trustees' policy is to operate a bar only as outlined above, we will have no objection to the way in which it is done. There are no limits on:

- the level of the turnover of the bar; or
- the size of the bar.

21. The only limits on the times when the bar is open are:

- if there are any conditions attached to the licensing law authority to sell alcohol; or
- as indicated in paragraph 18 above, ie the bar should only be open when the premises are being used for some other activity.

22. The trustees' practice must, of course, be consistent with their policy. One way in which they can demonstrate that they are only operating the bar for the convenience of those using the premises for other purposes is by publishing in their premises notices about the use of the bar. If they deliberately encourage, or turn a blind eye to, pub or social club use of the bar which they are running, whether for financial or any other reasons, they risk an assessment to tax on the whole of the profits of the bar.

23. Charity trustees have a duty to avoid incurring unnecessary tax liabilities. This can be avoided by arranging for the business to be conducted by a separate body (see paragraphs 26 and 29 below). Otherwise they may be personally liable to settle any tax bill incurred.

24. If the bar business is ancillary to the primary purpose of the charity, then any profits should be relieved from taxation on the same basis as those of a business that is directly connected with the furtherance of the charity's objects (section 505(1) of the Income and Corporation Taxes Act 1988).

The supply of alcohol in a way which is not connected with the furtherance of a charitable object

25. This constitutes non primary purpose trading and, accordingly, the profits will be liable for tax, unless they fall under the tax exemption for small-scale trading. More detail on this can be found in our guidance **Charities and Trading (CC35)**. Furthermore, exercising a trade that is not connected (other than financially) with the furtherance of the objects of an institution is not generally compatible with charitable status. The advice at paragraphs 26 to 72 below covers situations where trustees wish

The need for separation

to provide alcohol in a way that is not connected with the furtherance of the charity's objects but where they nonetheless consider that to do so would be in the best interests of the charity.

26. If the trustees want to provide the facilities of a pub or social club on their premises, whether for financial or other reasons, they should transfer the administration of the bar to a separate body. As has been explained in paragraphs 4 and 25 above, the exercise of such a trade is not compatible with charitable status. The profits of any such trade may be liable to tax even though the trade is being exercised by a charity (unless it falls under the tax exemption for small trading, see our guidance **CC35 Charities and Trading**). Separation, as well as protecting the assets of the charity from the creditors of the business, provides an opportunity to lessen any tax liability that is incurred in respect of the profits of the business (see paragraph 44 below). This can, however, be a complicated process. We strongly recommend that in all cases where separation is considered, trustees should consult their professional advisers (on possible tax implications) or ourselves (concerning protecting the assets of the charity) at an early state.

27. The separation of the bar from the charity must be absolutely clear. The bar must be established as a distinct and separate organisation, which does not include merely running the bar as a "sub-committee", "branch", or "section" of the charity (see also paragraphs 66-71 below on VAT).

28. There are three options for separation:

- an independent club can be formed;

An independent club

- a trading company owned by the charity can be set up; or
- an agreement can be reached with an existing trading company.

29. In any of these cases, those parts of the charity's premises that are to be used by the separate body should be the subject of a lease or licence to it on terms which do not involve any subsidy from the charity to the separate body. Paragraphs 51-56 below give further details on licence and lease arrangements.

Options

Can charity premises be used by the club?

30. Yes. However, this must be done under a formal arrangement. There are two ways in which the separate club may occupy part of the charity premises. One way is to grant an occupational licence, the other is to grant a lease. In either case the trustees should seek the advice of their solicitors or other specialist legal advisers before proceeding.

31. The first thing that the trustees will need to consider once they have decided to allow a club to occupy part of the charity's property is whether the charity has a power to let or sub-let. This will depend upon the terms of the title deeds and the charity's governing document.

32. Where trustees occupy property under a lease it will be necessary to ascertain whether they may sub-let to a non-charitable organisation. If they do not have the power to do so the trustees must negotiate with their landlords if they wish to proceed. They should also seek the advice of their solicitors or other specialist legal advisers and, if appropriate, ourselves.

33. Where a charity owns the freehold of the property there may be a restrictive covenant that prevents letting to a non-charitable organisation. In such a case the trustees may need to take legal advice and to enter into negotiations for the release of the covenant with the person benefiting from it.

34. If the governing document does not allow the trustees to grant a lease, they should consult us at an early stage, as we may need to establish a Scheme to confer the necessary power on the trustees. This is not, however, a formality. If the property is held in trust for use for specified charitable purposes, we would need to be satisfied that:

- the part of the property in question was not required for those charitable purposes; and
- the lease would not have any adverse effects on the use of the remaining property for charitable purposes.

35. It must be remembered that a Scheme will require publicity and may give rise to objections.

Will the club need an authority for the provision of alcohol?

36. Yes. It is the responsibility of those managing the club to ensure that it is properly constituted and that it has the necessary and appropriate authority to provide alcohol. The authority may be a justices' on-licence as described in Annex A or, more usually, the club may apply for a club registration certificate from the local magistrates' court. This allows for the supply of alcohol to club members (and, in

some cases, other persons where the constitution of the club allows for this) for consumption on the premises (see Annex A).

What are the advantages of using the independent club option?

37. Firstly, the members' club has a choice of authority for the retail sale or supply of alcohol:

- a club registration certificate; or
- a justice's on-licence for the club premises.

38. In contrast, if a separate trading company was to undertake this business activity, it could apply only for an on-licence. The licensing justices have a wide discretion to refuse or to attach conditions to authorities in what they perceive to be the public interest.

39. Secondly, the trustees will have protected the interests of the charity (by arranging for rent etc to be paid by the club) without involving themselves in the administrative responsibility and liabilities associated with the actual operation of the bar.

A trading company owned by the charity

40. Transferring the operation of the bar to a company owned by the charity will give the charity some direct control over how the bar is used. If this structure is adopted, the trustees must use their administrative rights in the company to ensure that it is conducted in the economic interests of the charity. This consideration clearly prevents the adoption by the company of a policy of selling alcohol at uneconomically low prices.

41. The company's profits from the bar business will be taxable in the usual way but the trustees' control over the company will enable them to

ensure that the company makes payments to the charity under the Gift Aid scheme (which includes payments made under deeds of covenant). These payments are set against the profits of the company for tax purposes and can have the effect of reducing the taxable profits to nil. The charity's income from the gifts is relieviable from tax under section 505 of the Income and Corporation Taxes Act 1988.

42. The relevant part of the charity's premises should still be let, or licensed, to the company at a full market rent or fee. The charity's surveyor should be asked to advise the trustees on what the rental potential of the premises is in the particular circumstances prevailing at the time taking into account any restrictions on use. Trustees should ensure that their surveyor is fully briefed. When instructing a valuer or surveyor trustees should make all constraints known, so that a price the market will bear can be ascertained. Paragraphs 46-53 below on lease and licence provisions also apply where a trading company is involved. It is important to ensure that the financial structures of the two organisations are kept distinct and at arm's length.

43. The trustees must remember that their interest in, and any support for, the company must be justified as an investment from the point of view of the charity. There is no reason in principle why the charity should not lend money to the company as an investment provided that:

- the trustees have the power to do so; and
- the investment is commercially sound.

44. There are special rules in the Taxes Acts which apply to investment of a charity's funds in a trading company of this nature, which will

be a private company. If these rules are not followed the charity will risk losing some or all of its tax exemptions. To qualify for relief the trustees must be able to show to the Inland Revenue that an investment is made:

- exclusively for charitable purposes;
- for the benefit of the charity (interest-free loans are not taken to be a benefit to the charity); and
- not for the avoidance of tax.

45. Investments will be regarded as being made for charitable purposes and for the benefit of the charity if they are a commercially sound investment. The company will, of course, have to obtain an appropriate authority to sell alcohol. We recommend that where a subsidiary trading company is to be established, the trustees read carefully the Inland Revenue's booklet **Trading by Charities (IR 2001)**.

What are the advantages of using a trading company?

46. This option enables trustees to:

- separate the business from the charity, so that if the business fails, the charity's assets are protected;
- ensure that the bar is conducted in the economic interests of the charity;
- invest in the trading subsidiary in certain circumstances; and
- arrange for the profit of the business to be passed to the charity in the most tax efficient way.

*An independent company
on commercial terms*

47. Some charities, especially larger ones, may prefer to appoint an independent company to run a bar business. This is because they consider that they can obtain a better return from the rent or licence fee paid by the independent company than they could from running the bar through a connected trading company.

48. Whilst this option would save any potential issues arising from a conflict of interest, the trustees will need to take particular care to ensure that the contractual arrangements between the independent company and themselves are such as to enable them to ensure that the business activities of the independent company cannot damage the ability of the trustees to carry out the charity's objects. Those arrangements will need to include:

- terminating the concession, and the lease or licence which went with it;
- regulating the nature and scale of the business which the independent company was authorised to conduct;
- sharing common facilities such as a car park;
- ensuring the income received is rental income rather than a profit share or joint venture share of the concession - the lease/licence fee may be linked in part to the turnover of the concession but should not be linked to profitability;
- due dates of payment under the lease/licence and termination clauses in the event of non-payment; and
- access to concessionaire's accounting records where rental income is in part turnover based.

Occupational licence

49. Any loan made by the charity to the independent company will need to be clearly justifiable on investment grounds.

50. The trustees would also have to ensure that the commercial enterprise did not use the identity of the charity to make money for itself inappropriately.

Options for separation

51. This gives the bar business (“the business”) no legal interest in the charity’s property, but:

- gives it a contractual right to use the charity’s premises;
- sets out the terms upon which it may use part of the charity’s premises; and
- sets the “fee” (this usually includes payments for heat, light, rates etc) which is to be paid. The licence should be drafted with care to avoid inadvertently creating a lease (it may be necessary to obtain professional advice on this).

Lease

52. This has the disadvantage to the charity of giving the bar business an estate in the charity’s property. If the lease is for a fixed period, during that period the charity might find it difficult to alter its premises or to move to new ones. On the other hand, if the bar business intends to borrow money to set up or improve the bar, it may be necessary for a lease to be granted to the bar business. This is because the lender (often a brewery) will almost certainly wish to take a charge on the premises as security for the loan. If the bar business is given

a lease of part of the premises, its leasehold interest can be charged as security. It would not be proper for the charity to borrow funds on behalf of the bar business. If this has happened, the trustees may be held personally liable to repay the loan. In such cases the trustees must take immediate steps to regularise the position by ensuring that the bar business takes over the full responsibility for repaying the loan.

53. The bar business may be able to obtain extensions of its lease under the Landlord and Tenant Act 1954, although it is possible to prevent this by the trustees and the bar business making a joint application to the Court before the lease is granted. Trustees will need to consider whether taking this action will affect the rental value of the property. Before proceeding with an application to the Court, they should consult their legal advisors.

54. Under section 36 of the Charities Act 1993 a charity may grant a lease of its property, without our consent, provided that certain statutory requirements are complied with. One of the requirements is that the lease should not be to a "connected person". The term "connected person" includes:

- a trustee;
- an employee or officer of the charity;
- a relative of either a trustee, employee or officer of the charity; and
- a company controlled by a trustee.

55. This means that if the lease is to a trading subsidiary owned by the charity, or to a club controlled by people who are also trustees of the charity, it will be to a connected person and our consent will be required.

*What should a lease
or licence contain?*

56. Further guidance about the requirements in connection with leases can be found in our guidance **Disposing of Charity Land (CC28)**.

57. The relationship between the bar business and the charity will need to be carefully defined in the lease or licence. The trustees will need to consider:

- The area to be leased or licensed:
 - Is it sufficiently large for the bar business to obtain the appropriate authority to supply alcohol and create a viable bar business?
 - Does it leave sufficient space for the charity's activities when the bar is in operation?
- The length of the term of a lease. It is important to have a sensible balance between the flexibility, from the charity's point of view, of a short term arrangement and giving the bar business sufficient security of tenure to enable it to form the commercial relationships necessary to let it operate properly.
- What level of involvement in the administration of the bar business they themselves need (having particular regard to the comments made in paragraphs 15-16 above and Annex A about licensing conditions and in paragraphs 66-71 below on VAT).
- How the rent or licence fee should be expressed. A rent or fee based wholly, or partly, on bar turnover might be considered the most suitable way to give the charity a proper economic return. A

rent or fee based on the level of the profits, or surpluses, of the bar business would not be suitable in the case of a lease to an independent club or company, as the bar business could depress the level of profits, or surpluses, by the adoption of a “cheap beer” policy.

- What responsibilities need to be imposed on the bar business for the upkeep and insurance of the premises which it is to be allowed to use.
- What controls need to be imposed on the use or treatment of the let premises to protect the charity’s interests.
- What arrangements need to be made for sharing and paying for the upkeep of common facilities such as corridors and toilets.
- What arrangements need to be made for ensuring the availability of the bar facilities for the charity’s “customers”, again having regard to the extent of the authority that the bar business will have under licensing law to supply alcohol.
- What provisions about ending the lease or licence are appropriate.

Taxation

Taxation of the profits of a bar business run by an independent club

58. A club which is owned and controlled by its members for their own social or recreational objects is not liable to tax on any profits, or surpluses, from transactions with the members. The profits from bar receipts from the supply of alcohol owned by the club to the members, for example, are not taxable profits. This is because

under the legal principle of “mutuality” a person cannot make a taxable profit out of trading with himself. However, any other income or gains received by the club, such as interest on invested funds etc, is taxable in the ordinary way. A members’ club which is an unincorporated association is assessable to corporation tax on any taxable profits or gains.

59. Where a members’ club is conducted by a company, that company may still be immune from tax on any surpluses from its transactions with members provided that:

- no dividends may be paid to the shareholders; and
- the share capital is all of one class and each member is a shareholder.

60. A members’ club will not, however, be able to rely on the “mutual trading” exemption insofar as the profits derive from sales to non-members. Profits on any event conducted by the club in which non-members participate or attend, such as lectures, plays, sports activities and so on, will be liable to tax. Some organisations seek to avoid this liability by offering some form of limited, temporary membership to casual users. However, all members should have similar rights and interests in the administration and property of the club if the mutual trading exemption is to be claimed. The grant of instantaneous membership with minimal rights is unlikely to prevent sales to those members from being regarded as ordinary trading for tax purposes. A club whose constitution allowed immediate membership could not be registered under the Licensing Act 1964.

61. Prior to the introduction of the Finance Act 2000 a members' club could seek to limit any tax liability by entering into a deed of covenant to pay over its taxable profits to the charity. Since the introduction of the Finance Act 2000 the separate tax exemption for payments made under a deed of covenant is withdrawn and all exemption for such payments is given under the Gift Aid Scheme.

62. There is no reason why a charity cannot continue to benefit from payments made under a legally binding agreement, such as a covenant, which is made after the Finance Act 2000 came into effect. This may remain a suitable option, for example, for a members' club which wishes to formalise the agreement regarding the amount of its profits that are to be transferred to the charity. However, for such payments to be effective, they will have to be brought within the Gift Aid Scheme.

“Small trading” tax relief

63. The Finance Act 2000 introduced a new income tax relief which exempts from tax all profits of non-objects-related small-scale permanent trading (“small trading”). The exemption will apply where all profits will be used for the purposes of the charity and the charity has a reasonable expectation that:

- the annual turnover will be no greater than £5,000; or
- if the turnover is greater than £5,000, it will be no more than 25 per cent of the charity's total gross income, subject to an overall limit of £50,000.

The exemption will also apply where the annual turnover does not, in fact, exceed these limits.

64. In addition to this exemption from direct tax, charities may also conduct certain fund-raising events without incurring direct tax liability on the profits, or VAT liability on sales.

Further information on tax

65. The tax treatment of charities' trading activities is explained in the Inland Revenue leaflet **IR2001, Trading by Charities**. This leaflet is available, free of charge, from IR Charities, Inland Revenue, St John's House, Merton Road, Bootle, Merseyside, L69 9BB (telephone 0151 472 6046 for trading enquiries or 0151 472 6036/6037 for general enquiries), or can be viewed on the Inland Revenue website www.inlandrevenue.gov.uk

Value Added Tax

66. In general, charities receive no special treatment in respect of VAT on their business activities, and registration is required if their taxable turnover exceeds the statutory limit. The VAT notices **701/1 ("Charities")** and **701/5 ("Clubs and Associations")** give further information and may be obtained from any local office of HM Customs and Excise. For the address, see your local telephone directory. They can also be viewed on the HM Customs and Excise website www.hmce.gov.uk

67. Our understanding is that in most circumstances (for exceptions see below) the retail sale of alcohol is liable to VAT at the standard rate, regardless of any trading limitations imposed by the supplier, whether the supply is by:

- a charity;

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- a company controlled by a charity; or
 - an independent club.

68. The following list, which is not intended to be exhaustive, sets out some of the different kinds of event that may, in the view of HM Customs and Excise, be held for fund-raising purposes where there may be the sale of alcohol:

- A ball, dinner dance, disco or barn dance.
- Performances: for example concerts, stage productions, and other events which have a paying audience.
- Film showings.
- A fete, fair or festival.
- Horticultural shows.
- Exhibitions - including art, history, science etc.
- A bazaar, jumble sale, car boot sale, or good as new sale.
- Games of skills/contests/quizzes.
- Firework displays.
- A dinner, lunch, or barbecue.
- An auction of bought-in goods.
- Raffles or lotteries.

69. There is a restriction to 15 events of the same kind at any one location, in any one financial year of the charity. This means that, for example, a charity could hold up to 15 events of

the same kind in each of a number of different towns or villages, and still qualify for the reliefs for all of these events. However, the reliefs do not apply to **any** events of the same kind at a location if more than 15 are held there in a year. So a charity which held say 16 events of a particular type in one location would have to pay tax on all of them. The reliefs do apply to events of different kinds held at the same location (subject to the 15 limit).

70. Any event, or succession of events, of the same kind in a particular location will not be counted in the figure of 15 if the weekly turnover of the event(s) is not more than £1000. If the weekly turnover exceeds £1000, then that particular event or those events are not small scale events and will count towards the 15 events of the same kind per location allowance.

71. A supply by way of mutual business is liable to VAT. Where a bar business is hived off by a charity to a separate body, trustees should be prepared to demonstrate that the purpose of the hiving off is not merely “business splitting” to take advantage of the small turnover exemption from VAT registration (the threshold is £55,000 as at May 2002 – for any changes see VAT Notice **700/1 (“Should I be registered for VAT?”)**). Fudging the separation may lead to the consolidation of the charity and the separate body for VAT purposes. This means that the trustees may be held liable for VAT due in respect of sales by the club or company to which the bar business has been hived off.

Rates

72. The use of the bar premises by a separate club under a lease or licence will have the effect that charity rating relief will be restricted to the premises retained by the charity.

Annex A

What is required under the Licensing Act 2003

The Licensing Act 2003 makes substantial changes to previous licensing legislation and sets out the types of licence available, defines licensable activities and makes local authorities responsible for issuing licences. Information about this Act and its introduction on 24 November 2005 can be found on the web site for the Department of Culture, Media and Sport at www.culture.gov.uk/alcohol_and_entertainment and we would suggest that you look at the guidance (and if necessary take legal advice) if it is likely that you will need a licence.

Licensable activities

The licensable activities relating to the supply or retail sale of alcohol and regulated by the Act are:

- The sale by retail of alcohol;
- The supply of alcohol by clubs;

The sale by retail relates to the way in which alcohol is sold to the users of commercial establishments, qualifying clubs or event goers by the licence holders for the purposes permitted by their licences.

The supply of alcohol by clubs relates to the way in which alcohol is provided by volunteer and social clubs and recognises that this is different to sales of alcohol in commercially run premises. There are qualifying provisions for clubs that are set out in the guidance about club premises certificates below.

Licensable activities may only be carried on under the authority of a premises licence, a club premises certificate or a temporary event notice.

Licences are also needed for the provision of “regulated entertainment” and late night refreshment – these are generally outside the scope of this booklet but more information is available on the website of the Department of Culture, Media and Sport.

Types of Licences

Premises Licence

A single premises licence provides for the sale of alcohol by retail, provision of regulated entertainment or provision of late night refreshment. It may cover some or all of these activities, the extent of which will need to be detailed in the application. It is granted to a named person in respect of premises where the licensable activities take place and is issued by the local authority in that area. “Person” generally includes a body of persons corporate or unincorporate. In this Act it also specifically covers a charity. A number of charities will find that this is the type of licence most suited to their needs where the sale or supply alcohol takes place on a regular basis from charitable premises or the charity is involved in regulated entertainment activity.

Where a premises licence is required for the sale or supply of alcohol it must name a designated premises supervisor.

Designated Premises Supervisor and Personal Licences

The designated premises supervisor (DPS) is responsible for the day-to-day running of the premises and is the named contact for the licensing authorities for those premises. They must hold a personal licence in their own right. It is not necessary for the DPS to be the premises licence holder although there is nothing to prevent them from carrying out both functions. Only one person can act as a DPS at the licensed premises even though there may be more than one person at those premises that holds a personal licence.

Personal licences relate only to the sale or supply of alcohol under a premises licence and are a legal requirement for anyone acting as the DPS. Any application for a personal licence will be subject to criminal records checks as certain previous convictions will prevent the issue of the licence. Such convictions include those that involve:

- serious crime;
- serious dishonesty;
- controlled drugs; and
- offences created by the Licensing Act 2003.

An accredited personal licence qualification must also be held by the applicant. As a charity you will need to be able to identify someone who can fulfil the responsibilities of a DPS and who is willing to undertake the accredited training.

Club Premises Certificate

A club premises certificate is directed at volunteer and social clubs organised for particular social, sporting or political purposes that sell or provide alcohol other than for profit to private members. For the most part this type of licence does not include charities although miners' welfare institutions and registered industrial and provident societies may qualify for a club premises certificate providing that they meet particular requirements relating to their constitution and management and satisfy the additional conditions about sale of alcohol.

A club premises certificate covers the supply of alcohol to members for consumption on or off the premises, sale by retail to members' guests for consumption on the premises and provision of regulated entertainment for members and guests. A club certificate provides exemption from the licensing of late night refreshment. Under a club premises certificate there is no requirement for a designated premises supervisor or for anyone to hold a personal licence.

In order to qualify for a club premises certificate and undertake qualifying club activities the club must meet the following criteria:

- club rules must not allow individuals to be admitted as candidates for membership with access to membership privileges until at least two days have elapsed between nomination and admission to membership;
- club rules must not allow admission as a member and access to membership privileges to be granted to individuals where there is no prior nomination and application until at least two days have elapsed;
- the club is established and conducted in good faith as a club;
- the club has at least 25 members;

- alcohol is not supplied to members on the premises otherwise than by or on behalf of the club.

Additional conditions must be met in order to be authorised to supply alcohol to its members and guests. The conditions are:

- the purchase and supply of alcohol by and for the club is managed by a committee made up of elected members of the club all aged over 18 years;
- No arrangements may be made for any person to receive any commission, percentage or similar payment at the expense of the club with reference to purchases of alcohol by the club;
- No arrangements may be made for any person to derive directly or indirectly any monetary benefit from the supply of alcohol to members or guests apart from to benefit the club as a whole or any indirect benefit a person derives by reason the supply contributing to a general gain for the club as a whole.

Temporary Event Notice

Many charities run small-scale ad hoc events as fund-raisers which can involve sale of alcohol or provision of regulated entertainment. Where a premises licence does not already exist or a licence does not cover all licensable activities a temporary event notice (TEN) can be used. It is the responsibility of the event organiser, known for these purposes as the "premises user", to send a TEN with the prescribed fee to the licensing authority and copy it to the Chief Police Officer no later than 10 working days before the date on which the event is due to start. The premises where the event is to be held might be inside a building but might also be in an open space such as a village green, a park or a street. The event itself must not involve more than 499 people and the number of notices that can be granted in a year is restricted to 5 unless the application comes from a personal licence holder when the number is increased to 50. There are also limits on the number of notices in respect of a particular set of premises during the year and on the number of days covered by notices in respect of the same premises during the year.

Licensing authorities

The main licensing authorities are:

- district councils in England;
- a county council in England where there is no district council;
- a county council or county borough council in Wales;
- a London borough council.

If you are in doubt about the type of licence required or about accredited qualifications you should take advice from your local licensing authority.

Annex B

Useful Addresses

Community Matters

12-20 Baron Street
London
N1 9LL

Telephone: 020 7837 7887

Fax: 020 7278 9253

www.communitymatters.org.uk

ACRE (Action with Communities in Rural England)

Somerford Court
Somerford Road
Cirencester
Gloucester
GL7 1TW

Telephone: 01285 653477

Fax: 01285 654537

www.acre.org.uk

WCVA (Wales Council for Voluntary Action)

Baltic House
Mount Stuart Square
Cardiff Bay
Cardiff
CF10 5FH

Telephone: 029 2043 1700

Fax: 029 2043 1702

www.wcva.org.uk

Lands Tribunals

48/49 Chancery Lane
London
WC2A 1JR

Telephone: 0207 947 7200

Fax: 0207 947 7215

www.courtservice.gov.uk/tribunals/lands

Significant changes from the previous version of this guidance

The previous version was dated October 2001. This version includes the revised threshold for VAT registration, as well as a number of minor amendments to keep the information given up to date.

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC3 Responsibilities of Charity Trustees
- CC18 Use of Charity Halls for Village Hall and Other Charitable Purposes
- CC20 Charities and Fund-raising
- CC28 Disposing of Charity Land
- CC35 Charities and Trading

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch ein canolfan cyswllt ar 0870 333 0123.

For a complete list of all our publications and audio-cassettes, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during office hours (08:30 - 18:00 weekdays) by telephoning us on **0870 333 0123**; or
- write to the Distribution Officer at **PO Box 392, Newton Aycliffe, DL5 6YG**.

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