

COMMITTEE: LICENSING

DATE: 6TH OCTOBER 2009

**SUBJECT: LICENSING ACT 2003 - MINOR VARIATIONS TO
PREMISES LICENCES AND CLUB PREMISES
CERTIFICATES AND SUPERVISION OF ALCOHOL IN
COMMUNITY PREMISES**

**REPORT BY: HEAD OF ENVIRONMENTAL AND CONSUMER
SERVICES/ PRINCIPAL SOLICITOR (LITIGATION)**

CONTACT OFFICER: TONY IRELAND 6416

IMPLICATIONS:

LEGAL	✓	COMMUNITY SAFETY
EQUALITIES		ENVIRONMENT
FINANCIAL	✓	CONSULTATIONS
STAFFING		OTHER

WARDS AFFECTED: ALL

PURPOSE

- 1 On 29 July 2009, the Licensing Act 2003 was amended by The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, and The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 .
- 2 The first Order introduces a simplified process for applicants to apply for 'minor' variations to their premises licence or club premises certificate, subject to certain restrictions.
- 3 The second Order enables Management Committees of defined Community Premises, when applying for the grant or variation of a

Premises licence, to request that the usual mandatory conditions requiring a Designated Premises Supervisor to be defined on the licence, and alcohol sales to be authorised by a personal licence holder should not be imposed and that instead there should be a condition requiring all alcohol supplies to be made or authorised by the management committee.

RECOMMENDATION(S)

4 The Committee is recommended to resolve that:-

- (i) the determination of applications for minor variations to premises licences and club premises certificates under s41A and s86A Licensing Act 2003 be delegated to the Head of Environmental and Consumer Services and additionally to the Licensing Service Manager (such delegation to include the making of any necessary decision as to which Responsible Authorities are consulted on applications and subsequently deciding whether to grant or refuse applications and**
- (ii) the determination of applications by Management Committees of community premises for grants and variations of premises licences under ss 25A and 41D Licensing Act 2003 where no representations are received be delegated to the Head of Environmental and Consumer Services and additionally to the Licensing Service Manager (such delegation to include the making of any necessary decision as to which Responsible Authorities are consulted on applications and subsequently deciding whether to grant or refuse applications and**
- (iii) to authorise the Monitoring Officer to amend Part 7 of the Council's Constitution accordingly.**

BACKGROUND

Minor Variations

- 5 Prior to the implementation of The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, a variation application under Section 34 of the Licensing Act 2003 was required for any change to the licence, including changes to any feature shown on the plan of the premises. The only exceptions were the transfer of the licence or variation of the Designated Premises Supervisor, which were and remain subject to simple notification procedures under the Act.**
- 6 In accordance with Section 34 of the Licensing Act 2003, a variation application must be copied to all Responsible Authorities (as defined in the**

- Act), as well as requiring advertisement in a local paper and by displaying a notice at the premises for 28 days.
- 7 The Government considered that this process was overly burdensome in respect of a significant proportion of changes that could be expected for licences, which by their nature, would be expected to have little or no impact on the licensing objectives.
 - 8 In order to reduce the administrative burden on licence holders and to encourage applications to be submitted to licensing authorities for such small-scale changes, a 'Minor Variations' procedure has been introduced.

Removal of Mandatory Conditions for Community Premises

- 9 Section 19 of the Licensing Act 2003 specifies that where a premises licence authorises the supply of alcohol, the licence must include two Mandatory conditions. The first is that no supply of alcohol may take place under the premises licence at a time when there is no designated premises supervisor in respect of the premises licence. The second is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

REPORT

Minor Variations

- 10 Only small variations that will not impact adversely on the licensing objectives will be subject to the simplified 'minor variations' process. On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.
- 11 In considering the application, the licensing authority **must** consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. For instance, Environmental Health would be consulted on an application with possible public nuisance implications.
- 12 Under this process, the applicant is not required to advertise the variation in a newspaper or circular or copy it to responsible authorities. However, they must display it on a white notice (to distinguish it from the blue notice used for full variations and new applications). The notice must comply with the requirements set out in regulations. In accordance with those regulations, the notice must be displayed for a period of ten working days

- starting on the working day after the minor variation application was given to the licensing authority.
- 13 The licensing authority must also consider any relevant representations received from interested parties within the time limit referred to below. As stated earlier in this Guidance, representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives. In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.
 - 14 Interested parties have ten working days from the 'initial day', i.e., the day after the application is received by the licensing authority, to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, beginning on the first working day after the authority received the application, with effect either that:
 - the minor variation is granted; or,
 - the application is refused.
 - 15 If the licensing authority fails to respond to the applicant within 15 working days (as defined by the Licensing Act 2003), the application will be treated as refused and the authority must return the fee to the applicant forthwith. However, the licensing authority and the applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.
 - 16 Where an application is refused and is then re-submitted through the full variation process, the full 28 days notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all responsible authorities (in accordance with the regulations applicable to full variations).
 - 17 Minor variations will generally fall into four categories:
 - minor changes to the structure or layout of a premises;
 - small adjustments to licensing hours;
 - the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and
 - the addition of certain licensable activities.
 - 18 In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives. Variations to:

- extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
- to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises

are **excluded** from the minor variations process and must be treated as full variations in all cases.

- 19 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. Where it is considered that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, the application should be refused.
- 20 There is Guidance, approved by parliament, in relation to factors that should be taken into account when considering the likely effect of an application upon the licensing objectives. However, it is recognised that such factors are not exhaustive and that 'licensing officers should bring their own experience and knowledge of licensing to bear when considering applications'.

Removal of Mandatory Conditions for Community Premises

- 21 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 allows certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition i.e. "Every supply of alcohol under the premises licence must be made or authorised by the management committee", instead of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act.
- 22 An application can only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises (the "management committee").
- 23 If such an application is successful, the effect of the alternative licence condition will be that the licence holder (i.e. the management committee) is responsible for the supervision and authorisation of all alcohol sales made pursuant to the licence. All such sales will have to be made or authorised by the licence holder. There will be no requirement for a Designated Premises Supervisor or for alcohol sales to be authorised by a personal licence holder.
- 24 The Order defines community premises as premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building. While it is considered that there may be issues relating to whether a premises is a community

- premises with a proper management committee, it is not thought that there should be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place.
- 25 Where it is a new application, there is an option to substitute the alternative condition. Where it is an existing licence, the application procedure is similar to the existing procedure for variation of the Designated Premises Supervisor.
 - 26 Clear guidance is provided to define 'community premises' to ensure that only those premises that are intended to benefit would be allowed to do so.
 - 27 Additionally, the application is subject to consultation with the police who may object to the disapplication of mandatory conditions. If the Chief Officer of Police issues a notice seeking the refusal of the application to include the alternative licence condition, the licensing authority must hold a hearing in order to reach a decision on whether to grant the application.
 - 28 The police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition in cases where they have objected to it.
 - 29 Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing.

PROPOSAL/OPTION

- 30 As listed above, the time restrictions in respect of this procedure are very short - applications for minor variations must be determined within 15 working days from when the application is made, and Responsible Authorities have only 10 working days to make a representation in respect of the application. Therefore, decisions on which Responsible Authorities are to be consulted will need to be made at the earliest opportunity to facilitate the process.
- 31 This procedure is intended to apply only to low-risk applications that would be considered to have no impact on the licensing objectives. There is no hearing process and where it would be considered that the application would adversely impact on the licensing objectives, the application would be refused and a full variation be required.

- 32 However, representations may be received and decisions will need to be made to grant or reject applications.. Representations made by Responsible Authorities (upon consultation) and Interested Parties would need to be considered to be relevant, which is no different to the current position in respect of representations made against new and full variation applications.
- 33 The Government recommends that decisions on minor variations should be delegated to licensing officers (paragraph 8.36 of the revised Guidance issued under s182 of the Licensing Act 2003). Therefore it is recommended that the Head of Environmental Services and the Licensing Service Manager be delegated the function to determine applications for minor variations.
- 34 In the case of applications by management committees of community premises for inclusion of the alternative condition, where the Police make representations a hearing will take place. If no representations are received then the authority needs to be satisfied that the arrangements for the management of the premises are sufficient to ensure adequate supervision of the supply of alcohol on the premises. It is this decision which Committee is asked to delegate to the Head of Environmental and Consumer Services and the Licensing Manager.

LEGAL IMPLICATIONS

- 35 All applications must be processed in accordance with the requirements of the legislation. The Orders under the Legislative Reform Act 2006 amend the Licensing Act 2003 and the Licensing Authority is now required to process applications for minor variations and to remove mandatory conditions for community premises where appropriate.

FINANCIAL IMPLICATIONS

- 36 The fee set by the DCMS for the minor variation is £89, and the fee in relation to community venues is set at £23.
- 37 It is unclear how many applications will be received for minor variations given the restrictions placed on the provisions that are excluded, and also in that applications can be refused without the provision for appeal.
- 38 There is the potential that the introduction of these Orders could reduce annual income, but not by any significant amount. Income will be monitored to ascertain any trends relating to the introduction of these measures.

APPENDIX

None

LIST OF BACKGROUND PAPERS
LOCAL GOVERNMENT ACT 1972, SECTION 100D

None