

NOTICE OF MEETING

MEETING	LICENSING ACT 2003 COMMITTEE
DATE:	TUESDAY 15 SEPTEMBER 2009
TIME:	9.30 am
VENUE:	BOURGES/VIERSEN ROOMS, TOWN HALL
CONTACT:	<i>Gemma George</i> <i>Telephone: 01733 452268</i> <i>e-mail address gemma.george@peterborough.gov.uk</i>
<i>Despatch date:</i>	<i>7 September 2009</i>

AGENDA

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There is an induction hearing loop system available in all meeting rooms. Some of the systems are infra-red operated, if you wish to use this system then please contact Gemma George on 01733 452268.

MEMBERS OF LICENSING ACT 2003 COMMITTEE

Councillors: Newton (Chairman), Dobbs (Vice-Chairman), Thacker, Morley, Khan, Swift, Saltmarsh, Peach, Murphy and Nawaz

**MINUTES OF A MEETING OF THE LICENSING ACT 2003 COMMITTEE
HELD AT THE TOWN HALL, PETERBOROUGH ON 16 JUNE 2009**

Present: Councillor Newton (Chair), Dobbs (Vice Chair), Thacker, Swift, Saltmarsh, Peach and Nawaz.

Officers in attendance: Adrian Day, Licensing Manager
Ken Gray, Principal Licensing Officer
Ian Robinson, Regulatory Officer
Simon Andrews, Licensing Officer
Jo Russell, Section Head – Business Regulation (Acting)
Amy Brown, Solicitor
Gemma George, Governance Officer

1. Apologies for Absence

There were no apologies received.

2. Declarations of Interest and Whipping Declarations

There were no declarations of interest or whipping declarations.

3. Minutes of Meetings of the Licensing Act 2003 Sub Committee

The Committee approved the following minutes:

- 2 July 2008 – Bogart's
- 28 July 2008 – 27 Oakleigh Drive
- 28 July 2008 – Smilte
- 21 August 2008 – The Comet
- 16 September 2008 – 715 Lincoln Road
- 26 September 2008 – Ebeneezers
- 21 November 2008 – Cross Keys
- 4 December 2008 – Somerfield
- 9 January 2009 – Asda
- 9 February - Ruticia

4. Summary of Committee Hearings Held Under the Previous Committee Structure

The Committee received a report which summarised the Committee hearings held by the Licensing Act 2003 Sub Committee under the previous Committee structure.

Insight into the various issues involved when considering an application and also the reasons why an application for a licence under the Licensing Act 2003 would be required to be heard by the Committee.

Members were advised of several hearings which had been held over the previous year. These included applications for a new premises licence, a review of a premises licence and a variation to a premises licence.

A brief verbal summary was given to the Committee on each hearing and Members were invited to comment on the report. No further issues were highlighted for discussion.

The meeting closed at 10.15 am.

Chairman

LICENSING ACT 2003 COMMITTEE	AGENDA ITEM No. 4
15 SEPTEMBER 2009	PUBLIC REPORT

Contact Officer(s):	Adrian Day, Licensing Manager Terri Martin, Regulatory Officer	Tel: 454437 Tel; 453561
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INTRODUCTION OF CHANGES TO THE LICENSING ACT 2003 BROUGHT ABOUT BY REGULATORY REFORM

R E C O M M E N D A T I O N S	
FROM : Licensing Section, Business Regulation	Deadline date :
<p>That the Licensing Act 2003 Committee notes: -</p> <p>the legislative changes to the Licensing Act 2003 which will need to be adopted in the Councils Constitution with regard to delegated authority for new application processes:</p> <ol style="list-style-type: none"> 1. Statutory Instruments 2009 N0.1772 Licences and Licensing, Regulatory Reform. The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 2. Statutory Instruments 2009 No.1724 Licences and Licensing, Regulatory Reform. The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009. 3. Statutory Instruments 2009 No.1809 Licences and Licensing. The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009. <p>As per new guidance issued under section 182 of the Licensing Act 2003.</p>	

1. PURPOSE AND REASON FOR REPORT

The purpose of the report is to advise Members of changes to the Licensing Act 2003 arising from changes in legislation. The Regulatory Reform process identified areas of the Licensing Act 2003 legislation which could be improved to make it less of a burden on applicants. In order to enable these changes, three new Statutory Instruments have been introduced with further guidance issued under section 182 of the Act. The three new Statutory Instruments came into force on 29th July 2009.

The changes in the legislation recommend certain functions of the new application process be delegated to an Officer. This requires changes to the Councils Constitution.

The changes will be recommended for adoption at Full Council on 14th October 2009 to enable the Council to continue to fulfil its statutory duties.

2. BACKGROUND INFORMATION

2.1 The Council has performed its statutory duties under the Licensing Act 2003, following Government Guidance, since the Act came into force in November 2005.

- 2.2** The three new Statutory Instruments have introduced two new application processes, complete with new prescribed forms and fees.
- 2.3** One of the new application processes is the introduction of a 'Minor Variation Application', which allows an applicant to make minor changes to the premises licence with a 'lighter touch' to the application process. With restrictions in place for what may be applied for as a 'minor variation'. For an overview of the new application process please refer to **APPENDIX A**.
- 2.4** The Second new application process is the ability for certain premises (Church and Village Halls) to make an application to disapply mandatory conditions with regards to the requirement of a Designated Premises Supervisor (DPS) or personal licence holder to authorise sales of alcohol to take place, in exchange for an alternative condition. For an overview of the new application process, please refer to **APPENDIX B**.
- 2.5** Department for Culture Media and Sport (DCMS) has also revised its guidance to Local Authorities, this supplementary guidance is attached as **APPENDIX C**.
- 2.6** The Local Authority Co-ordinators of Regulatory Services (LACORS) has produced a Councillor Briefing with further details on minor variations and this is attached at **APPENDIX D**.

3 DELEGATIONS

- 3.1** Section 8.36 of the supplementary guidance recommends that decisions on minor variations should be delegated to Licensing Officers.
- 3.2** An application to disapply the mandatory conditions and have the alternative licence condition instead, is very similar to the current DPS Variation application and should also be delegated in the same way. (i.e.) Where an application is received and has met the requirements of the regulations and no objections are received then this also would be considered by Officers.
- 3.3** If in exceptional circumstances the Chief Officer of Police objects on the grounds of crime and disorder, then a committee hearing would have to determine the application, as per section 4.46 of the supplementary guidance.
- 3.4** The Licensing Committee has already confirmed the existing scheme of delegations of requirements of the Licensing Act 2003 as per the guidance issued under section 182. This is attached at **APPENDIX E**.
- 3.5** The inclusion of these two new processes would amend the existing delegations as per **APPENDIX F**.

4 LEGAL IMPLICATIONS

- 4.1** Failure to have a correct decision-making process and scheme of delegation in place will be contrary to statutory guidance.
- 4.2** Legal services will be required to ensure that the decision making process is implemented in accordance with the new regulations, and may also be required to provide legal representation in the event of any appeals to the Magistrates against decisions of the council.

New Minor Variation Process

- ❖ Came into effect 29 July 2009
- ❖ A minor variation can only be granted if it has no adverse impact on any of the licensing objectives.
- ❖ Has to be made in the prescribed application form to the Local Authority only, no requirement for the applicant to serve the application on any of the Responsible Authorities
- ❖ Fee for the application is £89.00, no exemptions
- ❖ Revised plan if applicable
- ❖ Requirement for applicant to advertise the minor variation at the premises only, to allow interested parties to make relevant representations for a 'required period' of 10 working days
- ❖ Advertising requirements:
 - A4 or larger white notice at premises which can be conveniently read from the exterior of the premises
 - Printed legibly in black ink or typed in black
 - At or near the top of the notice heading
Licensing Act 2003: Minor Variation of Premises Licence or
Licensing Act 2003: Minor Variation of Club Premises Certificate
in font size equal or larger than 32
 - A brief description of the proposed variation or variations
 - The name of the applicant or Club
 - Postal address of the premises or Club if no address relevant information to establish which premises is identified
 - The postal address of the local authority and their web address where the register is kept and where it can be inspected.
 - The date by which an interested party may make representation
 - That it is an offence to make a false statement
 - All in font size 16 or larger
- ❖ The "required period" is the continuous period beginning on the first working day after the day on which to application was given to the authority and ending at the expiry of the ninth consecutive working day after that day
- ❖ No requirement to advertise in local newspaper or circular
- ❖ Has to appear in the authorities public register
- ❖ Nothing to stop one or more minor variations on the same premises, so long as they have no overall impact on the licensing objectives
- ❖ Excluded from this process are:
 - The addition of the sale or supply of alcohol as an activity to a Premises Licence or Club Premises Certificate
 - The sale or supply of alcohol at any time between 11pm and 7am
 - Any increase in the amount of time on any day during which alcohol may be sold or supplied
 - Extend the period for which it has effect (limited duration licences)
 - To vary substantially the premises to which it has effect (major plan changes)
 - Vary the DPS (separate process)
 - Include the alternative licence condition referred to in section 41D(3) (DPS requirement at community premises)

So if the current licence operates from 8am to 10pm they could swap an hour from the end of the licence and add it to the front so the licence would be from 7am to 9pm. So long as this would not have an impact on any of the licensing objectives.

- ❖ "initial day" means the first working day after the day on which the authority **receives** the application.
- ❖ It also contains the following requirements:
 - Licensing Officers must consult relevant responsible authorities as they judge necessary and take their views into account in determining the application (relevant representations)
 - Take into account any relevant representations from interested parties that are received within 10 working days beginning on the initial day
 - Licensing authorities must respond to applicants within 15 working days following receipt of the application, either allowing the minor variation or referring it to the full variation process

- No right of appeal against the decision to reject an application for minor variations
 - Where applications are referred to the full variation process, that process will apply in full, including the full 28 day notification period, the need for applicants to copy the application to all responsible authorities and the prescribed fee.
- ❖ If the authority considers that the minor variation(s) (if more than one minor variation is proposed, none of them whether considered separately or together could have such an effect) would have no adverse effects on the promotion of any of the licensing objectives, it must grant the application.
 - ❖ Where an application is granted, the authority must give a notice to that effect to the applicant. The notice must specify
 - Any variation of the premises licence which it is to have effect as a result of the grant of the application and
 - The time at which that variation takes effect.
 - ❖ In any other case the authority must reject the application.
 - ❖ The application must be determined within 15 working days beginning on the initial day, if not determined within that time the application is deemed rejected, and the fee must be returned forthwith. The applicant can recover this fee (if not returned in good time) as a debt due to the applicant.
 - ❖ If the application is rejected **as it has not been determined in time**, the authority (with the agreement of the applicant) can start the process again as a new minor variation application, with the same fee which accompanied the first application. The start date of this 2nd application is to be treated as the date of the agreement or other such date as is specified in that agreement.
 - The time referred to, is the time specified in the application or, if that time is before the applicant is given the notice, such later time as the authority specifies in the notice.
 - If the application is rejected, the authority must forthwith give a notice to that effect to the applicant. This notice must include a statement by the authority of the reasons for its decision.
 - ❖ If the variation is likely to increase the capacity for drinking on the premises, or affects access to exits or emergency routes, or impedes on the effective operation of a noise reduction measure, such as an acoustic lobby, this must be done via a full variation.
 - ❖ The addition of other licensable activities can be done via a minor variation, such as the inclusion of films, live music, plays etc. Government's intention that applications to vary the licence for live music should benefit from this process. Authorities will have to consider factors such as the proximity to residential properties, if the music is amplified or unamplified, the history of the premises, if enforcement work has been taken or not, or complaints received or not received during current authorisations including TENs. Also if the applicant has included any extra conditions to mitigate the impact of the activity.
 - ❖ Reduction in hours and removal of activities should be done via the minor variation process.
 - ❖ Licence conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition should be treated as a full variation.
 - ❖ Removal and addition of conditions can be done. But the removal or change to such conditions would have to not adversely affect the licensing objectives. For example a lot of fire conditions or embedded restrictions could be removed via this process. Or clarification of poorly worded conditions which are unenforceable or confusing for the applicant. Or if the premises was a pub and now operates as a restaurant then the removal of the SIA conditions could take place.
 - ❖ Authorities cannot impose their own conditions on the licence through minor variation. If Officers consider that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed they should refuse it.
 - ❖ Guidance States:
 - Applicants may volunteer conditions as part of the process. These conditions may arise from their own risk assessments or from informal discussions with responsible authorities or the authority.

Regulatory Reform Supervision of alcohol sales in Church and Village Halls, Community Premises

To remove the mandatory requirement for a Designated Premises Supervisor (DPS) and personal licence at community premises.

- ❖ Currently a premises licence which authorises the sale of alcohol, has to include the following Mandatory Conditions:
 - The first condition is that no supply of alcohol may be made under the premises licence-
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
 - The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- ❖ The reform process allows for certain premises to disapply these conditions and instead to have the alternative condition added:

“Every supply of alcohol under the premises licence must be made or authorised by the management committee.”

- ❖ There will be no requirement for a DPS or for alcohol sales to be supervised by a personal licence holder.
- ❖ The premises which may apply for this alternative wording are restricted to premises defined as:
 - “community premises” means premises that are or form part of-
 - (a) a church hall, chapel hall or other similar building, or
 - (b) a village hall, parish hall, community hall or other similar building
- ❖ “management committee” in relation to any community premises, means a committee or board of individuals with responsibility for the management of the premises.
- ❖ The application form is prescribed.
- ❖ The application can be submitted at the same time as a new application or as part of a variation. If it is incorporated as part of one of these processes there is no increase in the fee. (Still subject to the application fee applicable under each process. (NB every licence which authorises the sale of alcohol is subject to application and annual fees))
- ❖ This cannot be done under the minor variation process.
- ❖ The application may also be made alone, very similar to the DPS variation process.
- ❖ The application fee is £23.00.
- ❖ The Police can object by means of a representation to the application, when this occurs a hearing has to be held
- ❖ But if:
 - The relevant licensing authority is satisfied that the arrangements for the management of the premises by the applicant are sufficient to ensure adequate supervision of the supply of alcohol on the premises, and
 - If any representations are made pursuant to the application, the authority does not consider the inclusion of the mandatory conditions to be necessary to promote the crime objective
 - The licence must not include the mandatory conditions, but must include the alternative licence condition instead.
- ❖ Guidance states:

The premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises, and is also responsible for alcohol sales at community premises where the mandatory conditions relation to personal licence holders and Designated Premises Supervisors have been disappplied.

Where it is not clear whether premises are community premises licensing authorities will need to approach the matter on a case-by-case basis. The main consideration in most cases will be how the premises are predominately used. If they are genuinely made available for community benefit most of the time and accessible by a broad range of persons and sectors of the local community for purposes beneficial to the community as a whole, then premises will be likely to meet the definition. This could feasibly include educational premises, such as school halls, but only where they are genuinely and widely used for the benefit of the community as a whole, and not just the particular school in question.

Many schools and private halls are available for private hire by the general public. This fact alone would not be sufficient for such halls to qualify as “community premises”. Although availability of premises for hire might be seen as providing a facility for the community, licensing authorities will want to consider whether halls used largely for private hire by individuals or private entities are genuinely by their nature “community premises”. The statutory test is directed at the nature of the premises themselves, as reflected in their predominant use, and not only at the usefulness of the premises for members of the community for private purposes.

- ❖ The reference to a “committee or board of individuals” is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should have the capacity to provide sufficient oversight of the premises to minimise any risk to the licensing objectives that could arise from allowing the disapplication process.
- ❖ The application form does require applicants to set out how the premises is managed, it’s committee structure and how the supervision of alcohol sales is to be ensured in different situations, e.g. when the hall is hired to private parties.
- ❖ Where the management arrangements are less clear, licensing authorities may wish to ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application (subject to views of the police).
- ❖ As the premises licence holder, the management board or committee will collectively be responsible for ensuring compliance with the law, although there would not necessarily be any individual member always present at the premises.
- ❖ Where private hire for events that include the sale of alcohol is permitted by the licence, it would be necessary to have an effective hiring agreement. Licensing authorities should consider arrangements for the use of hiring agreements in the light of recommendations for best practice made by organisations such as ACRE and Community Matters.



dcms

department for
**culture, media
and sport**

THE LICENSING ACT 2003

Presented to Parliament pursuant to Section 182 of the Licensing Act 2003

Guidance issued under section 182 of the Licensing Act 2003

Supplementary guidance on:

- a simplified process for minor variations to premises licences and club premises certificates and;
- the removal of the requirement for a designated premises supervisor and personal licence at community premises.

July 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents and Notes

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Notes on changes resulting from Part 1:

Paragraphs 8.33 and 8.34 below replace the corresponding paragraphs in the previous Guidance.

Paragraphs 8.35 to 8.60 below are newly inserted. Subsequent paragraphs (former paragraphs 8.39 to 8.78) are renumbered as 8.65-104, except for former paragraph 8.53, which is replaced and renumbered as paragraph 8.79 below.

Paragraph 8.61 below replaces previous paragraph 8.35.

Previous paragraphs 8.36 to 8.38 inclusive are renumbered as 8.62 to 8.64 inclusive below.

Paragraph 6.11 below replaces the previous paragraph 6.11

Notes on changes resulting from Part 2:

Paragraphs 4.1; 4.2; 4.19; 8.24; 8.34; 10.45 and 10.53 below each replaces the corresponding paragraph in the previous Guidance.

Paragraph 8.79 below replaces previous paragraph 8.53.

Paragraphs 4.32 to 4.47 below are newly inserted.

Part 1: A simplified process for minor variations to premises licences and club premises certificates

[Chapter 8: Applications For Premises Licences]

VARIATIONS

Introduction

8.33 This Guidance revises and replaces the Guidance on variations of premises licences published on 28 June 2007⁷. Where a premises licence holder wishes to amend the licence the Act allows, in most cases, for an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.

Changes of name and address/ Designated Premises Supervisor

8.34 There are simplified processes for making applications in the following cases: a change of the name or address of someone named in the licence (section 33); an application to vary the licence to specify a new individual as the designated premises supervisor (section 37); an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the mandatory conditions concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); an application for minor variation of a premises licence (sections 41A to 41C).

Minor variations process

8.35 The Licensing Act 2003 has been amended by the insertion of sections 41A to 41C relating to minor variations. These sections were commenced on 29 July 2009. Small variations that will not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process. 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 regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42). In

⁷ http://www.culture.gov.uk/reference_library/publications/3667.aspx

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.

- 8.36 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.
- 8.37 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, they may need to consult the environmental health officer on an application with possible public nuisance implications. But there is no requirement to consult all responsible authorities on each application and in many cases the licensing authority may be able to make a decision without consultation.
- 8.38 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.
- 8.39 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.
- 8.40 If the licensing authority fails to respond to the applicant within 15 working days (see section 193 of the Act for the definition of working day) 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.
- 8.41 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).
- 8.42 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. **In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.**

Changes to structure/layout

- 8.43 Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises ;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
- impeding the effective operation of a noise reduction measure such as an acoustic lobby;

8.44 Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available.

8.45 An application to remove a licensable activity should normally be approved as a minor variation.

8.46 Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.

8.47 The Act covers a wide range of other licensable activities and licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant.

8.48 For example, the addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. Licensing authorities will need to consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is very much the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.

8.49 Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.

8.50 In considering applications to add licensable activities, licensing authorities and officers may find it helpful to consider the following factors:

- the nature of the licensable activity;
- proximity of the premises to residential areas;
- any licence conditions volunteered by the applicant to mitigate the impact of the activity;
- whether alcohol is sold at the premises when the licensable activity is taking place; and whether it will continue to be sold during the extended period. For example, a pub that applies to stay open an extra hour after the sale of alcohol has ended to sell hot drink and food could be considered to benefit the promotion of the licensing objectives;
- track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives, or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;

- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

This is not an exhaustive list and licensing officers should bring their own experience and knowledge of licensing to bear when considering applications.

Licensing hours

8.51 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. Applications to reduce licensing hours for the sale or supply of alcohol or to or move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

8.52 Applications to vary the time during which other licensable activities take place should be considered on a case by case basis with reference to the likely impact on the licensing objectives. In arriving at a decision, licensing authorities may wish to consider the following factors:

- the nature of the licensable activity;
- the extent of additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- proximity of the premises to residential areas;
- any licence conditions already in place to mitigate the impact of the activity; any additional conditions volunteered by the applicant;
- arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?
- whether the proposed extension applies only on the weekend or also during week days;
- whether there will be new admittances during that period;
- track record of the establishment whether positive or negative, e.g. complaints related to the licensing objectives, any enforcement action or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- whether the premises is already open during the extended period for other licensable activities;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

8.53 These factors are not an exhaustive list and licensing authorities and officers should bring their own experience and knowledge of licensing to bear when considering applications.

Licensing conditions

a) Imposed conditions

8.54 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. If the licensing officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, they should refuse it.

b) Volunteered conditions

8.55 Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority.

8.56 For instance, there may be circumstances when the licence holder and a responsible authority such as the police or environmental health authority, agree that a new condition should be added to the licence. For example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal. Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the responsible authority have come to a genuine agreement. The licensing authority should be alive to any attempts to pressure licensees into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, should discuss this with the relevant parties.

c) Amending or removing existing conditions

8.57 Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition should be treated as a full variation.

8.58 However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.

8.59 Changes in legislation may invalidate certain conditions. For instance, the recent Regulatory Reform (Fire Safety) Order 2005 annulled all fire safety related conditions imposed on licences purely for fire safety reasons. Although the conditions do not have to be removed from the licence, licensees and licensing authorities may agree that this is desirable to clarify the licensee's legal obligations.

8.60 There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the licensing authority to enforce it.

Full variations process

- 8.61 Any other changes to the licence require an application to vary under section 34 of the Act.
- 8.62 Licensing authorities will wish to consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the plan under section 17 of the Act, but have nevertheless been included, for example, moveable furniture (altering the position of tables and chairs) or beer gardens (installation of a smoking shelter that will not affect the use of exits or escape routes).
- 8.63 However, it should be noted that a section 34 application cannot be used to vary a licence so as to:
- extend a time limited licence; or to
 - transfer the licence from one premises to another.
- 8.64 If an applicant wishes to make these types of changes to the premises licence they should make a new premises licence application under section 17 of the Licensing Act 2003.

[Chapter 6: Club Premises Certificates]

- 6.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives. Licensing authorities should refer to Chapter 8 of this Guidance on the handling of such applications. In that Chapter most of the references to the premises licence, premises licence holders, and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.

Part 2: The removal of the requirement for a designated premises supervisor and personal licence at community premises

[Chapter 4: Personal Licences]

INTRODUCTION

- 4.1. This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. It also contains guidance for decision-making on applications from community premises (church and village halls etc.) to disapply the usual mandatory conditions that relate to personal licences and Designated Premises Supervisors (DPSs).

REQUIREMENTS FOR A PERSONAL LICENCE

- 4.2 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why individuals who may be engaged in making and authorising the sale and supply of alcohol require a personal licence. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder (see paragraphs 10.48 -10.53 of this Guidance). The only exception is for community premises in respect of which a successful application has been made to disapply the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act. (Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance). Any premises where the personal licence holder requirements do apply at which alcohol is sold or supplied may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence.

SPECIFICATION OF NEW DESIGNATED PREMISES SUPERVISORS

- 4.19 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the 'designated premises supervisor', as defined in the 2003 Act. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to disapply the usual mandatory conditions set out in sections 19(2) and

19(3) of the 2003 Act. Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance.

APPLICATION FORMS

- 8.24 An application for a premises licence must be made in the prescribed form to the relevant licensing authority and be copied to each of the appropriate responsible authorities. For example, applications for premises which are not vessels should not be sent to the Maritime and Coastguard Agency. The application must be accompanied by:
- the required fee (details of fees may be viewed on the DCMS website);
 - an operating schedule (see below);
 - a plan of the premises in a prescribed form; and
 - if the application involves the supply of alcohol:
 - a form of consent from the individual who is to be specified in the licence as the designated premises supervisor; or
 - in the case of a community premises seeking to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (i.e. to remove the usual requirements in respect of the authorisation of alcohol sales by a personal licence holder and for a Designated Premises Supervisor who holds a personal licence), a completed form prescribed for that purpose.

VARIATIONS

- 8.34 There are simplified processes for making applications in the following cases: a change of the name or address of someone named in the licence (section 33); an application to vary the licence to specify a new individual as the designated premises supervisor (section 37); an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); and application for minor variation of a premises licence (sections 41A to 41C).

APPLICATIONS TO CHANGE THE DESIGNATED PREMISES SUPERVISORS

- 8.79 Paragraphs 4.19 – 4.28 above cover designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor. Paragraphs 4.32 to 4.47 cover applications by community premises to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the authorisation of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence.

[Chapter 10: Conditions attached to premises licences and club premises certificates]

Designated Premises Supervisor

- 10.45 Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. The main purpose of the 'designated premises supervisor' as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force.

That person will normally have been given day to day responsibility for running the premises by the premises licence holder. The requirements set out in paragraph 10.46 to 10.53 below in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see paragraphs 4.32 to 4.47 of this Guidance).

Authorisation by personal licence holders

- 10.53 It must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises, and is also responsible for alcohol sales at community premises where the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to personal licence holders and Designated Premises Supervisors have been disapplied (see paragraphs 4.32 to 4.47 of this Guidance).

[Chapter 4: Personal Licences]

DISAPPLICATION OF CERTAIN MANDATORY CONDITIONS FOR COMMUNITY PREMISES

- 4.32 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (SI 2009/1724) amends the 2003 Act to allow 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 in sections 25A(2) and 41D(3) ("the alternative licence condition") of the 2003 Act in the licence instead of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act. Such an application may 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"). 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. 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 there may be issues relating to whether a premises is a community premises with a proper management committee, there should not be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place. There is more detailed commentary on what constitutes community premises in paragraphs 4.35 to 4.40 of this Guidance.
- 4.33 The process requires the completion of a new form which is set out in The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009/1809. Where the management committee of a community premises is applying for authorisation for the sale of alcohol for the first time, it should include the form with the new premises licence application or the premises licence variation application. No extra payment is required beyond the existing fee for a new application or a variation.
- 4.34 Where a community premises already has a premises licence to sell alcohol, but wishes to include the alternative licence condition in place of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act, it should submit the form on its own together with the required

fee. The work required to process such an application is expected to be similar to that required for to process an application for a variation of a Designated Premises Supervisor.

Definition of community premises

- 4.35 In most instances, it should be self evident whether a premises is, or forms part of a church hall, chapel hall or other similar building or a village hall, parish hall, community hall or other similar building.
- 4.36 Many licensing authorities will already have taken a view on how to determine whether a premises meets the definition of community premises for the purpose of the fee exemptions set out in regulation 9(2)(b) of the Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/79). As the criteria are the same, premises that qualify for these fee exemptions for regulated entertainment will also be "community premises" for present purposes.
- 4.37 However, there may be types of premises seeking disapplication of the personal licence and Designated Premises Supervisor requirements which have not previously sought exemption from the fee as a community premises. This might be because they had previously included alcohol or late night refreshment in their licence and therefore had to pay a fee regardless, or may have qualified for the exemption from the fee for regulated entertainment licences as an educational institution.
- 4.38 Where it is not clear whether premises are "community premises", licensing authorities will need to approach the matter on a case-by-case basis. The main consideration in most cases will be how the premises are predominately used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition. This could feasibly include educational premises, such as school halls, but only where they are genuinely and widely used for the benefit of the community as a whole, and not just for the particular school in question. As such, community premises are usually multi-purpose and a variety of activities can be expected to take place in them, such as playschools, senior citizens' clubs, indoor sports, youth clubs and public meetings.
- 4.39 Many community premises such as school and private halls are available for private hire by the general public. This fact alone would not be sufficient for such halls to qualify as "community premises". Although availability of premises for hire might be seen as providing a facility for the community, licensing authorities will want to consider whether halls used largely for private hire by individuals or private entities are genuinely by their nature "community premises". The statutory test is directed at the nature of the premises themselves, as reflected in their predominant use, and not only at the usefulness of the premises for members of the community for private purposes.
- 4.40 If the general use of the premises was contingent upon membership of a particular organisation or organisations, this would strongly suggest that the premises in question were not "community premises" within the definition. However, the hire of the premises to individual organisations and users who restrict their activities to their own members and guests would not necessarily conflict with the status of the premises as "community premises", provided the premises are generally available for use by the community in the sense described above. It is not the intention that 'qualifying' clubs which are able to apply for a club premises certificate should instead seek a premises licence with the disapplication of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to the supply of alcohol.

Management of the premises

- 4.41 Sections 25A(1) and 41D(1) and (2) of the 2003 Act allow applications by community premises to apply the alternative licence condition rather than the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act only where the applicant for the licence is the management committee of the premises in question. In addition, sections 25A(6) and 41D(5) require the licensing authority to be satisfied that the arrangements for the management of the premises by the committee or board are sufficient to ensure the adequate supervision of the supply of alcohol on the premises.
- 4.42 The reference to a “committee or board of individuals” is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should have the capacity to provide sufficient oversight of the premises to minimise any risk to the licensing objectives that could arise from allowing the responsibility for supervising the sale of alcohol to be transferred from a personal licence holder/designated premises supervisor. This could include management committees, executive committees and boards of trustees. The application form requires the applicants to provide the names of the management committee’s key officers e.g. the Chair, Secretary, Treasurer.
- 4.43 The application form requires applicants to set out how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations (e.g. when the hall is hired to private parties) and how responsibility for this is to be determined in individual cases and discussed and reviewed within the committee procedure in the event of any issues arising. The application form requires that the community premises submit copies of any constitution or other management documents with their applications and that they provide the names of their key officers e.g. the Chair, Secretary, Treasurer. Where the management arrangements are less clear, licensing authorities may wish to ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application (subject to the views of the police). Community premises may wish to check with the licensing authority before making an application. The management committee is strongly encouraged to notify the licensing authority if there are key changes in the committee’s composition e.g. to the Chair, Secretary, Treasurer and to submit a copy to the Chief Officer of Police. A failure to do so may form the basis of an application to review the premises licence, or be taken into account as part of the consideration of such an application.
- 4.44 As the premise licence holder, the management committee will collectively be responsible for ensuring compliance with licence conditions and the law (and may remain liable to prosecution for one of the offences in the Licensing Act) although there would not necessarily be any individual member always present at the premises. While overall responsibility will lie with the management committee, where the premises are hired out the hirer may be clearly identified as having responsibility for matters falling within his or her control (e.g. under the contract for hire offered by the licence holder), much in the same way that the event organiser may be responsible for an event held under a Temporary Event Notice. Where hirers are provided with a written summary of their responsibilities under the 2003 Act in relation to the sale of alcohol, the management committee is likely to be treated as having taken adequate steps to avoid liability to prosecution if a licensing offence is committed.
- 4.45 As indicated above, sections 25A(6) and 41D(5) of the 2003 Act require the licensing authority to consider whether the arrangements for the management of the premises by the committee are sufficient to ensure adequate supervision of the supply of alcohol on the premises. Where private hire for events which include the sale of alcohol is permitted by the licence, it would be necessary to have an effective hiring agreement. Licensing authorities should consider arrangements for the use of hiring agreements in the light of recommendations for best practice

made by organisations such as ACRE and Community Matters. Model hire agreements are available from these bodies. The model agreements can also be revised to cater for the circumstances surrounding each hire arrangement e.g. to state that the hirer is aware of the licensing objectives and offences in the 2003 Act and will ensure that it will take all necessary steps to ensure that no offences are committed during the period of the hire.

Police views

- 4.46 An additional safeguard is that in exceptional circumstances the Chief Officer of Police for the area in which the community premises is situated can object to a request for inclusion of the alternative licence condition on the grounds of crime and disorder, and any responsible authority and/or interested party can seek reinstatement of the mandatory conditions through a review of the licence (as provided in section 52A of the 2003 Act). The police will want to consider any history of incidents at an establishment in light of the actual or proposed management arrangements, including the use of appropriate hire agreements. If the Chief Officer of Police issue 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.

Appeals

- 4.47 Where the Chief Officer of Police has made relevant representations against the inclusion of the alternative licence condition, or given a notice under section 41D(6) which was not withdrawn, the Chief Officer of Police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition. Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing triggered by relevant representations or by a notice given under section 41D(6). Following a review of the licence in which the mandatory conditions are reinstated, the licence holder may appeal against the decision. If the alternative licence condition is retained on review, the applicant for the review or any person who made relevant representations may appeal against the decision.

Councillor Briefing**Licensing Act: Minor variations: a quick overview****Summary:**

A minor variations procedure has been introduced in order to allow operators to make small changes to their (Licensing Act) premises licences in England and Wales. The procedure was introduced as the financial cost to operators of making minor amendments to their licences was found to be disproportionate in view of the negligible impact such changes would have.

Only changes that would not undermine the licensing objectives are permitted under this procedure.

The Government recommends that the LA delegates decision making on Minor Variation applications to licensing officers. Interested parties, such as residents can make representations, which must be taken into account, but there is no hearing.

What type of applications will be made under this process?

The Guidance envisages 4 main types of minor variation application:

- Minor changes to the structure or layout of a premises
- Small adjustments to licensing hours
- Conditions: removal of out of date irrelevant or unenforceable conditions or volunteering of conditions
- Licensable activities: adding certain licensable activities

Fees

The fee per application is £89, and notably if the application is not dealt with within 15 working days, the fee must be refunded.

The application procedure

Applications are made to the licensing authority on standard forms. The application must be advertised on a white notice at the premises. There is no requirement to advertise the application in a local newspaper and no requirement to notify the responsible authorities.

Timescale

The licensing authority must process the application and determine it within 15 working days.

The first 10 working days of the 15 working day period constitute a consultation period in which Interested Parties may make representations to the licensing authority. LAs may also wish to consider the application and consult relevant responsible authorities during this time. A determination cannot be made during the 10 day consultation period.

Delegation

The Government recommends that the LA delegates decision making on Minor Variation applications to licensing officers. There are no hearings under the minor variation process. It is likely therefore that there will be no councillor involvement in this decision-making process.

Role of responsible authorities

There is no requirement for applicants to notify responsible authorities of their application. Instead, responsible authorities are involved at the request of the licensing officer responsible for determining the application.

The **DCMS Guidance** suggests that licensing officers "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."

Role of interested parties (residents and other organisations/individuals)

Interested parties may make representations based on the licensing objectives. Representations do not trigger a hearing under the Minor Variations process, but the Guidance states relevant representations must be into account in the decision-making process.

Live music

DCMS is encouraging licensing authorities to encourage the growth of live music whenever appropriate and possible through the minor variations procedure. For more information about this approach, please see a First article, available [here](#)

For more information please contact emily.scantlebury@lacors.gov.uk

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a Police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/ club premises certificate.		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a Police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a Police objection	All other cases
Applications for interim authorities		If a Police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a Police objection to a temporary event notice		All cases	

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Recommended delegation of functions

APPENDIX F

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a Police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/ club premises certificate.		If a relevant representation made	If no relevant representation made
*Application for a minor variation to a premises licence/ club premises certificate			All cases
Application to vary designated premises supervisor		If a Police objection	All other cases
*Application for the mandatory alcohol condition requiring a designated premises supervisor in respect of a premises licence to be disappplied		If a Police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a Police objection	All other cases
Applications for interim authorities		If a Police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a Police objection to a temporary event notice		All cases	

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