

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

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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.