

**REPORT TO: LICENSING COMMITTEE – FRIDAY 2 OCTOBER 2009**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: NICKII HUMPHREYS**

**Licensing Act 2003 – Statutory amendments to the Licensing Act 2003 to introduce a simplified “minor variations” process for premises licences and club premises certificates.**

## **1. Purpose of report**

The purpose of this report is to:

- a) Appraise Members on the recent statutory amendments to the Licensing Act 2003 (“the Act”) so as to permit minor variations to premises licences or club premises certificates that will not impact adversely on the licensing objectives; and
- b) Recommend that the existing scheme of delegations under the Act is extended so that the responsibility for the consideration and determination of minor variation applications is delegated to officers.

## **2. Recommendation**

***RECOMMENDED:***

- a) That the contents of the report are noted; and***
- b) That the Committee delegate all functions relating to the new minor variations procedures as set down in The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 – SI 1772/2009 to the City Solicitor with the authority to further delegate to other officers as he sees fit.***

## **3. Background information**

With effect from 29 July 2009 the Act has been amended by virtue of The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 – SI 1772/2009 to include sections 41A – 41C (premises licences) and 86A – 86C (club premises certificates) which introduce a minor variations procedure in order to allow premises licence and club premises certificate holders to make small changes to their licences/certificates in England and Wales, providing that such changes do not impact adversely on the licensing objectives which are:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

These changes have been 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.

Appendix A to this report sets out the changes to the Act in relation to minor variations.

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- The removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and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

However, the test that must be applied in all such cases is whether the proposed variation could impact adversely on any of the four licensing objectives.

The Government has amended the Statutory Guidance issued in accordance with section 182 of the Act to reflect these legislative changes and the additional guidance is attached as Appendix B to this report.

The new procedure **CANNOT** be used for applications consisting of any of the following:

- To extend the time period for which the licence or certificate has been granted;
- To substantially vary the premises concerned;
- To specify an individual as the premises supervisor;
- To add the sale by retail or supply of alcohol as a licensable activity;
- To authorise the sale by retail or supply of alcohol at any time between the hours of 11pm and 7am; or
- To increase the amount of time on any day during which alcohol may be sold by retail or supplied; or
- To include the alternative licence condition that may be applied in relation to the variation of premises licence: supply of alcohol from community premises.

#### 4. The application process

1. An application under the new process will be subject to a standard application form and a fee of £89.
2. The applicant does **NOT** have to advertise the application in a newspaper or copy it to the responsible authorities but they **DO** have to display it on a white notice on the premises for a period of 10 working days for the benefit of notifying interested parties. The information to be included on the notice is set down in The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 (SI 1809/2009).
3. The Licensing Authority must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and if it needs specialist advice, and will take their views into account when reaching a decision. However, 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.
4. Any relevant representations received from interested parties arising from the public notice within the prescribed time limit must be considered but must clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives.

#### 5. The decision making process

5. For this type of variation, there is no right to a hearing.
6. The Licensing Authority must make a decision by no later than 15 working days after the application was received. The decision must either be that:
  - The minor variation is granted; or
  - The application is refused.
7. In either case, a notice of the decision must be given to the applicant. The notice must specify:
  - Any variation of the licence or certificate which is to have an effect as a result of the grant of the application;
  - The time at which that variation takes effect; or
  - In the case of a rejection of an application, the notice must include a statement by the Licensing Authority giving the reasons for its decision.
8. In cases where an application for a minor variation has been refused, the licence holder may re-submit an application via the full variation process which will involve consultation with responsible authorities, notices on the premises and in the newspaper and the full variation fee.

## 6. Scheme of delegation

The Secretary of State has recommended that local authorities delegate the power to determine minor variation applications to licensing officials as a cost-effective way of handling these types of applications.

Section 7 of the Licensing Act 2003 confers all licensing functions under the Act to the Licensing Committee (except for the adoption or amendment of the statement of licensing policy which must be undertaken by Council or functions discharged by other Committees). Section 10 of the same Act provides for the delegation of functions to a Sub Committee and to officers with the exception of particular functions.

In order to ensure the Council is able to process applications in the manner intended the delegation to officers of the functions contained within sections 41A – 41C and 86A – 86C is required.

Given the limitations of the minor variation process in terms of the extent of changes to a licence/certificate that can be achieved through this process and that a hearing is not required for these types of applications, it is considered appropriate to recommend to members that the power to determine such applications is delegated to officers.

## 7. Appendices

Appendix A - Copy of sections 41A – 41C (premises licences) and 86A – 86C (club premises certificates) of the Act;

Appendix B - Supplementary Guidance by the Department of Culture, Media and Sport in respect of minor variations



Licensing Manager

**Background Papers – None**

**Amendments to the Licensing Act 2003 by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009:**

**In respect of premises licences:**

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Variation of Licences: minor variations

**41A Application for minor variation of premises licence**

- (1) Subject to subsection (3), the holder of a premises licence may apply under this section (instead of under section 34) to the relevant licensing authority for variation of the licence.
- (2) Subsection (1) is subject to regulations under—
  - (a) section 54 (form etc. of applications etc.);
  - (b) section 55 (fees to accompany applications etc.).
- (3) An application may not be made under this section to vary a premises licence so as to—
  - (a) extend the period for which it has effect,
  - (b) vary substantially the premises to which it relates,
  - (c) specify an individual as the premises supervisor,
  - (d) add the sale by retail or supply of alcohol as an activity authorised by the licence,
  - (e) authorise—
    - (i) the sale by retail or supply of alcohol at any time between 11pm and 7am, or
    - (ii) an increase in the amount of time on any day during which alcohol may be sold by retail or supplied, or
  - (f) include the alternative licence condition referred to in section 41D(3).

**41B Determination of application under section 41A**

- (1) This section applies where the relevant licensing authority receives an application made under section 41A.
- (2) In determining the application the authority must—
  - (a) consult such of the responsible authorities as it considers appropriate, and
  - (b) take into account any comments made by those authorities in relation to the application.
- (3) If the authority considers that—
  - (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or

- (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect, it must grant the application.
- (4) In any other case the authority must reject the application.
- (5) A determination under this section must be made within the period of fifteen working days beginning on the first working day after the day on which the authority receives the application.
- (6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—
  - (a) the application is rejected, and
  - (b) the authority must forthwith return the fee that accompanied the application.
- (7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—
  - (a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 41A,
  - (b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or
  - (c) both.
- (8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.
- (9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.

41C Supplementary provision about determinations under section 41B

- (1) Where an application is granted under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.
  - (2) The notice under subsection (1) must specify—
    - (a) any variation of the premises licence which is to have effect as a result of the grant of the application, and
    - (b) the time at which that variation takes effect.
  - (3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.
  - (4) Where an application is rejected under section 41B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.
  - (5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.
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## **In respect of Club Premises Certificates:**

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Variation of certificates: minor variations

### **86A Application for minor variation of club premises certificate**

- (1) Subject to subsection (3), a club which holds a club premises certificate may apply under this section (instead of under section 84) to the relevant licensing authority for variation of the certificate.
- (2) Subsection (1) is subject to regulations under—
  - (a) section 91 (form etc. of applications etc.);
  - (b) section 92 (fees to accompany applications etc.).
- (3) An application may not be made under this section to vary a club premises certificate so as to—
  - (a) vary substantially the premises to which it relates,
  - (b) add the supply of alcohol as an activity authorised by the certificate, or
  - (c) authorise—
    - (i) the supply of alcohol at any time between 11pm and 7am, or
    - (ii) an increase in the amount of time on any day during which alcohol may be supplied.

### **86B Determination of application under section 86A**

- (1) This section applies where the relevant licensing authority receives an application made under section 86A.
- (2) In determining the application the authority must—
  - (a) consult such of the responsible authorities as it considers appropriate, and
  - (b) take into account any comments made by those authorities in relation to the application.
- (3) If the authority considers that—
  - (a) the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives, or
  - (b) if more than one variation is proposed, none of them, whether considered separately or together could have such an effect,it must grant the application.
- (4) In any other case the authority must reject the application.
- (5) A determination under this section must be made within the period of fifteen working days beginning on the first working day after the day on which the authority receives the application.
- (6) If at the expiry of the period referred to in subsection (5) the authority has not determined the application—
  - (a) the application is rejected, and

- (b) the authority must forthwith return the fee that accompanied the application.
- (7) But nothing in subsection (6) prevents the authority, with the agreement of the applicant, from treating—
  - (a) an application rejected by virtue of that subsection (“the first application”) as a new application made under section 86A,
  - (b) the prescribed fee that accompanied the first application as the prescribed fee accompanying a new application, or
  - (c) both.
- (8) A new application of the kind referred to in subsection (7)(a) is to be treated as having been made on the date of the agreement referred to in that provision, or on such other date as is specified in the agreement.
- (9) Any fee owed to an applicant under subsection (6) may be recovered as a debt due to the applicant.

86C Supplementary provision about determinations under section 86B

- (1) Where an application is granted under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.
  - (2) The notice under subsection (1) must specify—
    - (a) any variation of the club premises certificate which is to have effect as a result of the grant of the application, and
    - (b) the time at which that variation takes effect.
  - (3) The time referred to in subsection (2)(b) is the time specified in the application or, if that time is before the applicant is given the notice referred to in subsection (2), such later time as the authority specifies in the notice.
  - (4) Where an application is rejected under section 86B, the relevant licensing authority must forthwith give a notice to that effect to the applicant.
  - (5) The notice under subsection (4) must include a statement by the authority of the reasons for its decision.”.
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# **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 2007. 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 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 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.