

LICENSING ACT 2003 – MINOR VARIATIONS – AMENDMENTS TO PROCEDURES AND DELEGATION TO OFFICERS

1. Introduction

- 1.1 The purpose of this report is to inform members of changes to the Licensing Act which have introduced a simplified process for “minor variations” to premises licences and club premises certificates and to ask the Committee to delegate powers in this regard to the Licensing Officer.

2. Background

- 2.1 When the holder of a premises licence or club premises certificate wishes to alter the terms or conditions of the licence or certificate, or alter the layout of the premises, they must apply to the licensing authority for a variation. This involves completing an application which must be copied to the six responsible authorities. The application also has to be advertised at the premises for 28 days and by publishing a notice in a local newspaper. If no relevant representations are received after the 28 day period has expired, the application for variation must be granted. If there are relevant representations, the application must be referred to the Licensing Sub-Committee for consideration.
- 2.2 It has been recognised that this process is time-consuming and expensive and new Regulations now provide for simplified procedures for “minor variations”. The Government recommends that decisions on minor variations should be delegated to licensing officers.

3. New Provisions

- 3.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates Order) 2009 provides a simplified procedure for what is regarded as a “minor variation” to premises licences and club premises certificates. Statutory guidance has also been issued. Minor variations will generally fall into four categories:
- Changes to the structure or layout of a premises;
 - Adjustments to licensing hours (not to certain provisions relating to alcohol);
 - The removal of out of date, irrelevant, or unenforceable conditions (whether volunteered or imposed), or the addition of volunteered conditions;
 - Addition of certain licensable activities.
- 3.2 The new procedure cannot be used to:
- Extend the period for which the licence or certificate has effect;
 - Transfer the licence or certificate from one premises to the other;
 - Vary the designated premises supervisor;
 - Add the sale or supply of alcohol;
 - Authorise the sale or supply of alcohol at any time between 2300 and 0700;
 - Increase the hours for the sale or supply of alcohol;
 - Vary the licence for a village hall to sell alcohol without a designated premises supervisor.

- 3.3 In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.
- 3.4 Under the new minor variations process, the applicant is not required to advertise the variation in a newspaper or copy it to responsible authorities. However, they must display the proposal(s) on a white notice at the premises for a period of ten working days. During this period any interested parties (i.e. residents or businesses in the vicinity and representative bodies of such persons/bodies) may submit representations. Representations are only relevant if they clearly relate to the promotion of at least one of the licensing objectives.
- 3.5 If the Licensing Authority has any doubt about the impact of the minor variation on any of the licensing objectives and they need specialist advice, they must consult the relevant responsible authority and take their views into account in reaching a decision – but there is no requirement to consult all responsible authorities on each application.
- 3.6 There is no right to a hearing but the licensing authority must take any relevant representations into account in arriving at a decision. If the authority considers the variation(s) proposed in the application could not have had an adverse effect on the promotion of any of the licensing objectives, it must grant the application. In any other case the authority must reject the application.
- 3.7 If the authority does not determine an application within 15 working days, the application is treated as refused and the authority must return the fee to the applicant. 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 treated as the fee (or part thereof) for the new application.
- 3.8 Where an application is refused it may be re-submitted through the full variation process.

4. Delegation

- 4.1 As stated above, the Government recommends that decisions on minor variations should be delegated to licensing officers. It is recommended that the Committee delegate authority to make decisions in regard to minor variations to the Council's Licensing Officer.
- 4.2 The Licensing Officer would, of course, exercise his delegation only in cases where he was satisfied that the requested variation(s) would not impact adversely on the four licensing objectives. If he was in any doubt he would consult the relevant responsible authority. "Interested Parties" are able to make representations and any representations would be considered before any decision was made. If, under delegated powers, the Licensing Officer refused an application for a minor variation, the applicant is able to submit an application under the normal variation process.

5. Financial Implications

- 5.1 The statutory fee for a minor variation application is £89. While it is very difficult to predict what level of fee income will arise from the new procedure, there might be might result in slightly increased income to the Council. There were 31 minor variations processed by Licensing Services during the last calendar year. Of these,

17 can be directly attributed to routine or targeted visits by the Licensing Enforcement Officer to licensed premises.

6. Environmental Implications

6.1 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.

7. Crime and Disorder Implications

7.1 The Act covers a wide range of other licensable activities and licensing authorities will need to consider each application for a minor variation on a case by case basis and in the light of any conditions volunteered by the applicant which address the licensing objectives.

8. Equality and Diversity Implications

8.1 There are no equality and diversity issues directly arising from this report.

9. Recommendation

9.1 That the following delegations be agreed:

Matter to be delegated	To whom delegated
Determination of applications for a minor variation to premises licences and club premises certificates	Licensing Officer
Decision on whether an application for a minor variation should be referred to a responsible authority	Licensing Officer

For Further Information Please Contact:

Paul Weston
Licensing Officer
Tel: 023 8028 5449
Fax: 023 8028 5596
Email: paul.weston@nfdc.gov.uk

Background Papers:

Licensing Act 2003
Section 182 Guidance
NFDC Statement of Licensing Policy