

**Licensing Act 2003 – Minor Variations and Mandatory Conditions for Community Premises**

**Licensing Committee**

**Chairman:** Councillor Peter Tyson.

**Lead Officer:** Martin Jepson, Head of Legal and Democratic Services.

**Report Author:** Clinton Boyce, Legal Services Manager.

**Summary and recommendations:**

<p>Summary:</p>	<p>To advise members of minor changes to the Licensing Act 2003 and to seek appropriate delegation to the Head of Legal and Democratic Services to deal with applications relating to such minor changes, applications for variations relating to the supply of alcohol in community premises and to delegate to such Officer the determination of full applications for a licence where representations are received from responsible authorities and subsequently agreed.</p> <p>A more detailed report relating to minor variations was considered by the Licensing Committee on the 27<sup>th</sup> October 2009 and approved.</p>
<p>Recommendations:</p>	<p>That the decision of the Licensing Committee made on the 27<sup>th</sup> October 2009 be endorsed and that Council approve the delegation of authority to the Head of Legal and Democratic Services to:</p> <p>(a) process and determine applications made under sections 41A to 41C and 86A to 86C of the Licensing Act 2003 (minor variations to premises licences and club premises certificates);</p> <p>(b) process and determine applications made under sections 25A and 41D of the Licensing Act 2003 (relating to the supply of alcohol in community premises) except where a police objection is received; and</p> <p>(c) to grant all applications under the Licensing Act 2003 where representations have been received from a responsible authority which requests that conditions be attached to the licence to be granted and that those conditions are subsequently agreed by the applicant and that there are no other outstanding matters to be resolved in respect of the application.</p>

## **1.0 Introduction**

This report deals with three separate issues which should simplify licensing procedures and save costs. The first two are a result of new legislation, the third relates to officers dealing with applications under the Licensing Act 2003 where responsible authority objections are resolved by mutual agreement.

## **2.0 Minor Variations**

- 2.1 The Licensing Act 2003 has been amended by the insertion of sections 41A to 41C relating to minor variations. 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 still display a notice on the premises concerned for 10 working days to allow residents to comment.
- 2.2 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives.
- 2.3 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. 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.
- 2.4 The licensing authority must also consider any relevant representations received from interested parties within the time limit referred to above. 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, but licensing authorities must take any representations into account in arriving at a decision. The decision must be made within 15 working days of the application being received. If a decision is not made it is deemed refused.
- 2.5 Minor variations will generally fall into four categories: minor changes to the structure or layout of 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. 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. In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives. Each case will be considered on its merits and only if there is no adverse impact on the licensing objectives will the application be granted. If there is an adverse impact which could be overcome by conditions then the application must be refused as there is no power to impose conditions.

2.6 The Guidance recommends that decisions in respect of minor variations are delegated to officers. This seems sensible and will allow routine applications which do not affect the licensing objectives to be dealt with expeditiously. It is therefore recommended that such decisions are delegated to the Head of Legal and Democratic Services.

### **3.0 Community Halls**

3.1 Community halls (defined in new legislation 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) are subject to the same legislation as public houses are when it comes to the sale or supply of alcohol. This means that the premises must have a designated premises supervisor and alcohol sales must be authorised by a personal licence holder. This can be tedious and new legislation has been introduced to reduce the burden.

3.2 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”).

3.3 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.

3.4 In making the application the management committee will have to show that there are properly constituted and that 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. If they are then the application will be granted. If there are problems at a later date the licence can be called in for review and the original condition (requiring DPS and personal licence holder) reinstated.

3.5 As the management committee will be responsible they should ensure that any hiring out of the hall which involves the sale of alcohol is properly covered by a hire agreement which puts in place effective steps to ensure that the law relating to sale or supply of alcohol is complied with. 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.

3.6 The Police can object to an application. Rights of appeal are granted to the applicant or the police depending on the decision made.

3.7 It is recommended that applications for such variations are dealt with the Head of Legal & Democratic Services except where a police objection is received in which case a Licensing Sub-Committee should determine the matter.

#### **4.0 Delegation of Uncontested Applications**

4.1 As members of the Licensing Sub-Committees will be aware some applications simply require endorsement of agreed conditions. This occurs where the only representation received is from the police or environmental health and then only requires conditions to be attached. If the conditions are agreed then members will have difficulty in challenging that agreement. An applicant could simply withdraw his application and resubmit the application in a form that the police or health were happy with. No representations would be received second time round and the licensing authority would be duty bound to grant the application. If there are no other full contested hearings then it is not cost-effective to convene a Licensing Sub-Committee for a five minute hearing. It is recommended that such agreed applications are delegated to the Head of Legal and Democratic Services. Where representations are received which do not relate to conditions which are subsequently agreed then a full hearing will be necessary. This delegation will not affect the current volume of substantive business dealt with by Sub-Committees.

#### **5. Financial and human resource implications (including sources of finance)**

5.1 In respect of minor variations a fee of £89 per application is payable. It is expected that the number of applications will be small and so increased income is likely to be minimal. In respect of community halls a fee of £23 per application will be payable. Again expected income is likely to be minimal.

5.2 In respect of human resource implications the delegation to officers, particularly of the applications referred to in paragraph 4 above, will allow applications to be processed quickly. However the number of applications involved is likely to be relatively small.

#### **6.0 Project and risk management**

6.1 Not applicable. Applications relate to day to day work only.

#### **7.0 Impact on Corporate Plan**

7.1 Not applicable. This function is a statutory duty and only indirectly relates to Corporate Plan objectives relating to community safety.

## List of Appendices

None.

## List of Background Documents:

DCMS Guidance referred to in report together with relevant legislation.

## List of Consultees:

Head of Finance and Management Information Services;  
Head of Legal and Democratic Services; and  
Portfolio Holder.

## CHECKLIST FOR DEALING WITH KEY ISSUES

Please confirm against the issue if the key issues below have been addressed . This can be by either a short narrative or quoting the paragraph number in the report in which it has been covered.

Impact on Crime and Disorder	Directly relates. Crime and disorder will be taken into account in determining individual applications.
Impact on Sustainability	Not applicable.
Impact on Rural Proofing	Not applicable.
Health and Safety Implications	Not applicable.
Project and Risk Management	Not applicable.
Impact on Equality and Diversity Issues	An equality and diversity assessment exists in respect of Licensing Act 2003 functions. That assessment has been reviewed in light of the report's proposals and no new issues have been found.
Children and Young Persons Implications	Indirectly taken into account as a licensing objective in determining individual applications.
Human Rights Act Implications	The relevant legislation adequately deals with such rights.
Monitoring Officer Comments	All legal issues are fully dealt with in the report and the proposed delegation seems the most appropriate way forward.
Section 151 Officer Comments	Apart from an expected slight increase in income there are no other financial implications.

Please say if this report will require the making of a Key Decision    NO