

**LICENSING COMMITTEE: 8 September 2009**

**Report of the Chief Strategic Planning and Environment Officer**

**LICENSING ACT 2003 - MINOR VARIATIONS**

**1. Background**

- 1.1 At its meeting of 9 September 2008 it was reported to the Committee for information that on 4 August 2008 the Department of Culture Media and Sport (DCMS) had issued a Licensing consultation document seeking views on the making of a Legislative Reform Order to implement proposals to introduce a new minor variations process and to remove certain requirements at community premises.
- 1.2 The Legislative and Regulatory Reform Act 2006 (the 2006 Act) enables the Crown, with the approval of Parliament, to make a legislative reform order to remove or reduce a burden falling directly or indirectly on any person. In respect of the minor variation process this has been established by Statutory Instrument 2009/1772 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 which was made on 30 June 2009 to come into effect on 29 July 2009.

**2. Details of the Order.**

- 2.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 has amended the Licensing Act 2003 to provide a procedure for Premises Licences and Club Premises Certificate holders to apply for minor variations to the licence or Club Certificate holders. The new sections 41A to 41C (Premises Licences) and 86A to 86C (Club Premises Certificates) of the Licensing Act provide a process for the application to be made without going through the full variation procedure.
- 2.2 The new process may only be used for minor matters to vary a Premises Licence or Club Premises Certificate. It may not be used to extend the period during which the licence has effect or authorise the supply of alcohol or extend the hours for the sale of alcohol or in any other way substantially vary the Licence or Certificate. Minor variations will include:-

(a) Minor changes to the structure or layout of a premise

Many small variations to layout will have no adverse impact on the licensing objectives. Licensing Authorities will 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

premise) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives.

(b) Small adjustments to Licensing Hours

Variations to extend the 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 variation 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 move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

(c) The removal of out of date, irrelevant or unenforceable conditions or additions of volunteered conditions.

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. 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. In some cases conditions may no longer apply e.g. there may be no need for door supervision if a bar has been converted into a restaurant and embedded conditions may no longer apply. There may also be cases where it is necessary to revise wording of a condition that is unclear and/or enforceable.

(d) The addition of certain licensable activities.

It is 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. 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.

- 2.3 An applicant must complete the authorised application form and submit it to the licensing authority with a fee of £89.00. The applicant is required to advertise the application by posting a white notice at the premises for ten days. Responsible authorities and interested parties have 10 days to make representations. The authority must consider any representations and determine the application within 15 days or the application is considered rejected and the fee must be returned. The overall test is whether the proposed variation could impact adversely on any of the four licensing objectives. The application must be rejected if the authority believes, after consulting with any relevant responsible authority, that it would have an adverse effect on the licensing objectives. There is no requirement for a hearing to be held and Section 8.36 of the Supplementary

Guidance issued under Section 182 of the Licensing Act 2003, which comes into force on 29<sup>th</sup> July 2009 recommends that decisions on minor variations be delegated to licensing officers. If the minor variation is refused, the applicant can either apply for a full variation or a new premises licence as it currently stands within the Act.

### **3. Achievability**

This report contains no equality personnel or property implications.

### **4. Legal Implications**

- 4.1 All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

### **5. Financial Implications.**

- 5.1 The permitted fees under the Licensing Act 2003 are set nationally by the Government which has indicated that it will set fees at a level that would achieve full recovery of the administrative, inspection and enforcement costs falling on any licensing authority associated with their licensing functions. They have recommended that the fee for an application for a Minor Variation should be set initially at £89.00.
- 5.2 It is anticipated that at this level the fees would be adequate to cover the provision of the function at the expected level.

### **6. Recommendation**

- 6.1 It is recommended that the report be noted and that the Chief Strategic Planning and Environment Officer and the Operational Manager (Licensing & Strategic Services) be delegated authority to determine applications for minor variations in respect of Premises Licences and Club Premises Certificates.

**SEAN HANNABY**

**31 July 2009**

**CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER**

This report has been prepared in accordance with procedures approved by Corporate Managers. Background Papers: Report to the Licensing Committee of 9 September 2008 entitled "Minor Variations and Removal of Personal Licence Holder Requirements from Community Premises."