

TITLE: UNIVERSAL REPORT TEMPLATE - GUIDANCE

Committee

The Licensing Committee

Officer Contact

Beejal Soni -

Papers with report

Table of Delegations for Licensing Functions

HEADLINE INFORMATION

Purpose of report

To advise Members of changes to the Licensing Act 2003 with regard to minor variations and the requirements for a Designated Premises Supervisor in Community Premises as a result of reforms promoted by the Department for Culture, Media and Sport (DCMS).

To advise Members that a DPS at certain community premises can be replaced by a Management Committee.

Contribution to our plans and strategies

Does this report contribute to delivering any plan or strategy of the council, if so state which here.

Financial Cost

No financial estimates currently available

Relevant Policy Overview Committee

Not Applicable

Ward(s) affected

All

RECOMMENDATION

The Licensing Committee is asked to consider this report and to:

- (a) delegate to the Head of Licensing Services the power to grant or refuse minor variations;
- (b) approve the amendment of Appendix A of the London Borough of Hillingdon Statement of Licensing Policy to reflect the above recommendation.
- (c) Note that a Designated Premises Supervisor at certain community premises can be replaced by a Management Committee.

INFORMATION

Reasons for recommendation

Failure to respond to legislative changes or set delegations at an appropriate level may result in unworkable or avoidable licensing processes, and have an efficiency impact on the Council.

Due to the strict fifteen working day deadline for determining minor variation applications made under Sections 41a or 86a of the Licensing Act 2003, failure to delegate responsibility to officers may make the system unworkable and result in unnecessary hearings, refunding of prescribed fees and increased risk of legal challenge.

Alternative options considered / risk management

No alternative decision is available

Supporting Information

Minor Variations – Current Position

Members will recall that Section 34 of the Licensing Act 2003 (“the Act”) provides that the holder of a premises licence may apply to the relevant licensing authority for variation of the licence. A variation is required for any change to any aspect of the licence, including any feature shown on the plan of the premises. Section 84 of the Act makes comparable provision in relation to club premises certificates.

In order to apply for a variation, the licence or certificate holder must complete a prescribed variation application form and send it, together with the prescribed fee, the original licence and the revised plan (if appropriate) to the licensing authority. They must also copy all documents to the seven ‘responsible authorities’ (the police, fire and rescue authority, etc), advertise the application in the local paper (or circular) and place a blue notice with details of the application at or on the relevant premises.

The licensing authority must grant the application after 28 days unless it receives ‘representations’ from interested parties (local residents and businesses in the vicinity of the premises) or from any of the responsible authorities. Representations must relate to one or more of the four licensing objectives.

If representations are received, the licensing authority must hold a hearing to consider them (unless all parties agree this is unnecessary) and take any steps it considers necessary for the promotion of the licensing objectives, including adding to or modifying the conditions of the licence or certificate or rejecting all or part of the application. If the application is refused, the applicant may appeal to the local magistrates’ court for the relevant petty sessions area.

Amended Minor Variation Process

The Act has been amended, via Legislative Reform Order Statutory Instrument 1772 / 2009, in order to allow for the provision of a new ‘minor’ variations process. The Government state that this “will provide a quicker, less bureaucratic and cheaper route for the approval of small, low risk changes to licences and club certificates” and will relate to approximately 30% of variation applications. The new process came into force on 29th July 2009.

Minor variations will generally fall into the following four categories:

- i) Minor changes to the structure or layout of a premises;
- ii) Small adjustments to licensing hours;
- iii) The removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and,
- iv) The addition of certain licensable activities.

However 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 of alcohol or to move (without increasing) the licensed hours between 07.00 and 23.00 will be normally classed as minor variations.

In all cases the overall test for a licensing authority will be whether or not the proposed variation would impact adversely on any of the four licensing objectives.

Under the minor variation process, licence and club certificate holders will still be required to apply to a licensing authority for the variation, but the process will differ from the full variation process currently in place, in the following respects:

- The applicant will not be required to advertise the minor variation in a newspaper, or circular, however it must be displayed on a white notice (to distinguish it from the blue notice used for full variations and grant applications) for a period of 10 working days at or on the relevant premises.
- They will not be required to copy the application to responsible authorities.
- Interested parties will have a period of 10 working days to make relevant representations to the licensing authority (as opposed to 28 calendar days for a full variation or grant application).
- Licensing authorities will be required to consider any relevant representations received from interested parties within the time limit referred to above. However there is no provision to hold a hearing (as for a full variation or grant application), but licensing authorities must take any representations into account in arriving at a decision.
- With respect to responsible authorities, licensing authorities will be required to copy the application to those they consider appropriate in each case. This obligation will apply only if the authority is in any doubt about the impact of the variation on the licensing objectives. The authority will be required to take into account any views expressed by the authorities they consult. As with interested parties there will be no formal hearing to consider these views, but they will have a bearing on (and may even be decisive of) the authority's view as to whether the changes proposed in the application amount to a "minor variation" of the licence or certificate.
- As interested parties have 10 working days to make representations, the authority must therefore wait until this period has elapsed before determining the application.
- However the authority must inform the applicant of its decision to grant or reject the variation within, at the latest, 15 working days or the application is treated as refused and the fee must be returned to the applicant.
- There will be no right of appeal. If the application is refused, the applicant may resubmit a revised application through the minor variations procedure or submit a full variation application.
- Where the applicant agrees, the licensing authority may treat an application and/or the accompanying fee as a fresh application and/or a fresh fee submitted to accompany it. In such cases the 15 working day period for determining the application will recommence (the Government state that this element of the policy was included to ensure that there will be scope for flexibility in the way the applicant and licensing authorities deal with the consequences of the authority's failure to comply with the 15 working day deadline). The applicant's agreement will be required for any deemed resubmission of the application or the fee.

- Applicants will pay a flat rate fee to the licensing authority of £89 per application (rather than the current banding of between £100 and £635).

The Government have amended the Guidance, issued under Section 182 of the Act, to include these new processes. For Members' information, new guidance on these matters as issued by the DCMS will be provided separately.

Community Premises

At present a premises licence that authorises the supply of alcohol includes the mandatory condition that require a designated premises supervisor to be specified and, and that every sale of alcohol at such premises is to be authorised by a personal licence holder.

The modifications that are proposed would permit a management committee of a community premises to include in its application for a premises licence authorising the sale of alcohol an application for an alternative licence conditions to apply instead of the normal mandatory condition. Community Premises are defined as any church or chapel hall (or similar building), any village, parish or community hall (or similar building).

The alternative licence condition is the condition that every supply of alcohol under the premises licence must be made or authorised by the management committee.

Representations may be made by the Police if they believe the inclusion of the alternative condition instead of the mandatory condition would undermine the crime prevention objective.

If no representations are made, and the authority is satisfied that the arrangements for the management of the premises are sufficient to ensure adequate supervision of the supply of alcohol, then the alternative licence condition is to be included.

When asked to consider a Review of a Premises Licence for Community Premises with the alternative licence condition, the licensing authority may determine that the normal mandatory licence condition should apply instead of the alternative condition if it is necessary for the promotion of the licensing objectives.

Premises that currently hold a licence which includes the mandatory conditions may make an application for variation to include the alternative licence conditions instead. This has to be a full variation application and cannot be done via the new minor variation process.

Financial Implications

The changes involved in implementing and exercising the new procedure will be contained within existing budgets.

The fee for the application for minor variations, which has been set by Government at £89.00 on the basis of cost recovery, will be allocated accordingly within existing budgets for the processing of licensing applications. It is not possible to estimate how many applications will be received and thus what income will be received.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The new process will reduce the administrative and oversight burden on church and village halls. It will also create a quicker and cheaper process for any applicant wishing to apply for minor variations.

Consultation Carried Out or Required

DCMS carried out a consultation in 2007 and 2008 on amending the Licensing Act 2003 to provide for a new 'minor variations' process and relaxing the supervision of alcohol sales in Community Premises. The changes fit around the Government's drive for 'Better Regulation' in terms of simplifying regulatory oversight of business activities in line with the general thrust of the 'Hampton Review' recommendation of reducing the administrative burden of regulation.

CORPORATE IMPLICATIONS

Legal

All applications have to be processed in accordance with the requirements of the legislation. The Licensing Act is prescriptive in terms of the procedure to be adopted in terms of applications for minor variations. The proposed delegation will ensure that licensing applications are dealt with in accordance with the legislation.

The Licensing Committee is authorised to delegate licensing functions to the Licensing Service where it considers that such delegations are necessary.

Corporate Property

Where reports include asset / property matters corporate property services MUST be consulted.

BACKGROUND PAPERS

- The Licensing Act 2003.
- Statutory Instrument 1772 / 2009 - "The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009".
- The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009

Appendix A

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	SUB-COMMITTEE	OFFICERS
Application for the grant or renewal of a personal licence	If a Police objection	If no objection made
Application for personal licence, with unspent convictions	If a Police objection	If no objection made
Application for premises licence/club premises certificate	If a representation made	If no representation made
Application for provisional statement	If a representation made	If no representation made
Application to vary premises licence/club premises certificate	If a representation made	If no representation made
Application to vary designated premises supervisor	If a Police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a Police objection	All other cases
Application for Interim Authorities	If a Police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc		All cases
Decision to object when local authority is a consultee and not the lead authority	All cases	
Revocation of Personal Licence where convictions come to light after grant of renewal	All cases	
Determination of a police representation to a temporary event notices	All cases	
Determination of minor variation applications for premises licences and club premises certificates		All cases