
Meeting: Licensing Committee

Date: 14 October 2009

Subject: Delegation of Functions – Minor Variations

Minor Variations to Premises Licences and Club Premises Certificates pursuant to Sections 41A to 41C and 86A to 86C of the Licensing Act 2003, as amended (“the Act”) and Variations to Premises Licences regarding a new Condition (Alternative Licence Condition) pursuant to Sections 25A, 41D and 52A of the Act.

Report of: Head of Public Protection

Summary: The report proposes that The Licensing Sub Committee delegate responsibility for all minor variations to premises licences and club premises certificates to officers.

Contact Officer: Susan Childerhouse

Public/Exempt: Public

Wards Affected: All

Function of: Licensing Committee

Reason for urgency (if appropriate) To ensure that all Minor Variation applications under the Licensing Act 2003 can be dealt with in the statutory 15 day timescales

RECOMMENDATIONS:

- 1. that the Director of Sustainable Communities be authorised to determine applications for minor variations of premises licences and club premises certificates in accordance with the provisions contained within the Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2008.**
- 2. that accordingly paragraph 4.3.10 of the Scheme of Delegation to Officers be amended by the addition of the following delegations and that the Constitution Advisory Group be advised accordingly:-**

Delegation	Qualifications (if any)
Determination of whether an application is deemed to be a minor variation.	None

Determination of application for a minor variation to a premises licence.	None
Determination of application for a minor variation for a club premises certificate	None

Background

1. On the 29th July 2009 The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 and The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 came into force. The regulations provide an update to The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 and the order amends The Licensing Act 2003.
2. The new regulations and order allow for variations that will not impact adversely on the licensing objectives to be subject to a simplified 'minor variations' process.
The Act does not define what a "Minor Variation" is information is set out at Appendix 1 relating to what may and may not be considered.
In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.
3. Sections 25A, 41D and 52A relate to a new condition regarding alcohol called an Alternative Licence Condition and were inserted in the Act by The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 No. 1724 which was made on 30 June 2009 and came into force on 29 July 2009 ("Order 1724").

Normally a Premises Licence which authorises the sale of alcohol must contain the Mandatory Conditions relating to alcohol ("Mandatory Conditions") which prohibit the supply of alcohol at any time where there is no Designated Premises Supervisor ("DPS") specified on the Premises Licence or at any time when the DPS does not hold a Personal Licence (or that licence is suspended) and also require that every sale of alcohol must be made or authorised by a Personal Licence Holder.

These new Sections allow the Management Committee of a Community Premises to be collectively responsible for the supervision of alcohol sales instead of a DPS by applying for the Alternative Licence Condition to be on the Premises Licence in place of the Mandatory Conditions. Such an application can only be made if the Licence Holder is, or is to be, a committee or board of individuals with responsibility for the management.

4. There is no requirement for these applications to be subject to consultation with responsible authorities, the applicant is not required to advertise the variation in a newspaper or circular or copy it to responsible authorities. However, they must display a notice, this notice must be white to distinguish it from the blue notices used for full variations and new applications and provide notice to the chief officer of police – this is only for the alternative licensing condition in 10(2), 12(2) or 13A

5. The Central Bedfordshire Constitution Part E2, Annex C, paragraph 7, Licensing Sub Committee Delegated functions states that the Licensing Sub - Committee is authorised to undertake the following functions on the Council's behalf; determination of application to vary premises licence where relevant representations are made.
6. The Council must determine the Minor Variation application within 15 working days starting on the first working day after the Council receives the application, otherwise it is deemed to be "refused" and the Council must return the application fee which has been set at £89.00. The DCMS Guidance confirms at paragraph 8.39 that the Council cannot determine an application before the 10 working day consultation period has expired and therefore there is a very small window in which to determine an application – 5 working days - or the application is deemed to be refused.

However, the Council with the agreement of the Applicant may treat the application or the fee or both as rejected, returned and resubmitted to the Council as a new application. This new application will be treated as having been received by the Council on the day of the agreement or on any other such date as specified in the agreement and the timescales will start from this date. Any fee which is owed to an Applicant may be recovered by the Applicant as a debt.

Considerations

7. New supplementary Government Guidance under S182 of the Licensing Act 2009 was published in July 2009. It gives guidance on the simplified process for minor variations and recommends that the decision-making process be delegated to officers. Attached at Appendix 2
8. Section 8.36 of the Guidance states that on receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. If not, the application can be processed as a minor variation and there will be no hearing, regardless of whether or not representations are received. In line with the recommendations in the Guidance, the Committee is asked to delegate the decision-making process to officers. If it were considered that there would be an adverse impact on any of the four licensing objectives, a full variation would be required. Full variation applications with no representations are already delegated to officers (Delegation No. 4.3.10.5) and where representations are received, the current procedure of holding a hearing would not change.

Conclusion and Next Steps

9. In accordance with the Government Guidance it is therefore recommended that the Director of Sustainable Communities be authorised to determine applications for minor variations of premises licences (such delegation would include authority to determine whether an application did constitute a "minor variation" (ie: that it would not adversely impact on any of the four licensing objectives.)

CORPORATE IMPLICATIONS

Council Priorities:

Creating Safer Communities is supported by the 4 licensing objectives

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Financial:

The fee set by the Government for a minor variation application is £89 and if the application is not dealt with within 15 working days, the fee must be refunded. As we do not know how many of these types of applications will be made we cannot say at this time what the impact may be for Central Bedfordshire. In order to mitigate financial implications of the amendment a processes will be put in place to ensure that applications can be determined by officers within 15 days of receipt

Legal:

The Licensing Act 2003 (Premises and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

Risk Management:

None

Staffing (including Trades Unions):

None

Equalities/Human Rights:

None

Community Development/Safety:

None

Sustainability:

None

Appendices:

Appendix 1: What constitutes a minor variation

Appendix 2: Guidance issued under section 182 of the Licensing Act 2003

Background Papers (open to public inspection):

Licensing Act 2003

The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009

The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005

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 No. 1724.

Department for Culture, Media and Sport: Guidance issued Under Section 182 of the Licensing Act 2003

Location of Papers : Priory House