

Committee: LICENSING

Agenda Item

Date: 16 September 2009

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Title: RECENT REFORMS TO LICENSING LAW

Author: Michael Perry, Assistant Chief Executive,
01799 510616

Item for decision

Summary

1. Following a consultation exercise in which this committee participated, the Government has passed two statutory instruments amending the Licensing Act 2003. The amendments include a shortened and cheaper procedure for applying for minor variations to a licence and also makes provision for community premises to be able to sell alcohol without having a designated premises supervisor. This report is to inform members of the changes and to seek a variation in the Scheme of Delegation to enable applications to be dealt with effectively.

Recommendations

2. That members note the contents of this report and make such amendments to the Scheme of Delegation as may be appropriate to ensure the efficient administration of the service.

Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - 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 and
 - the Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009.

Impact

- 4.

Communication/Consultation	The Regulations contain provisions requiring consultation with responsible authorities and the public. A letter has been sent to all Town and Parish Clerks in the district explaining the change regarding community premises and asking them to pass a copy of the letter to the management committees of any such
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	premises within their area.
Community Safety	The protection of the public from harm is one of the licensing objectives. The Minor Variations Order only applies where the proposed variation could not have an adverse effect on the promotion of any of the licensing objectives.
Equalities	None.
Finance	The fee for a minor variation is £89. The fee for an ordinary variation is the same for the grant of a new licence based upon the rateable value of the premises. This varies between £100 and £1,905. It follows that there is the potential for a loss of income. However, in practical terms a few variations have been applied for and the loss is unlikely to prove significant. Where community premises are licensed for the sale of alcohol and the management committee wish to vary the licence so as to remove the need for a designated premises supervisor, the fee payable is £23. As this is a new legislative provision this may generate a small amount of additional income. Applications to vary to include the sale of alcohol attract the full fee.
Human Rights	None.
Legal implications	There is no right of appeal against a refusal to grant a minor variation. Disappointed applicants must therefore either apply for a full variation and pay the appropriate fee or seek judicial review of the Council's decision.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	Additional work will be required in dealing with minor variations. With an ordinary variation it is for the applicant to publicise the application and notify the responsible authorities. Whilst the applicant must still advertise the application on the premises, the responsibility of notifying the responsible authorities rests with the

	licensing authority.
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Situation

5. Prior to the new regulations coming into effect on the 29 July 2009 any application to vary a premises licence was required to be advertised on the premises on blue A4 paper and notice of the application had to be served upon the responsible authorities. If there were no representations within the consultation period (28 days) the application for the variation had to be granted in the terms applied for. If there were representations from responsible authorities or interested parties then the matter needed to be determined by committee. The fee payable for a variation was exactly the same as the fee payable for a new licence.
6. The new regulations introduce a quicker and cheaper procedure for dealing with minor variations. The expression 'minor variation' is not defined but the procedure may not be used for
 - Extending a licence which has a termination date
 - Substantially varying the premises to which it relates
 - Specifying an individual as the designated premises supervisor (NB. there is already a short procedure for dealing with this).
 - Adding the supply of alcohol as a licensable activity
 - Authorising the supply of alcohol at any time between 11 pm and 7 am
 - Increasing the amount of time on any day during which alcohol may be sold by retail or supplied
 - Permitting the management committees of community premises to trade without a designated premises supervisor.
7. The requirements for advertising minor variations on the premises are similar to those for advertising for a new licence or for a full variation save that the paper is to be white instead of blue and the time for making representations is shorter being 10 working days starting the day after the application is given to the licensing authority.
8. Although there is no requirement for the applicant to serve notice of the application upon any of the responsible authorities, the licensing authority must consult such of the responsible authorities as it considers appropriate. In determining the application the authority must take into account any relevant representations made by the responsible authorities or made by an interested party and received by the authority within 10 working days after the application has been received.
9. If the authority considers that the variation proposed in the application (or if there is more than one variation proposed none of them whether considered separately or together) could not have an adverse effect on the promotion of any of the licensing objectives, the application must be granted. In any other case the application must be rejected.

10. Applications must be determined within 15 working days after the authority has received the application. Failure to do so results in the application being deemed to have been rejected and the fee must then be returned to the applicant although the applicant and the licensing authority may agree to start the procedure afresh based on the existing application and fee. This timescale is extremely tight and it may be difficult if not impossible to arrange for a committee to meet to consider whether or not in light of any representations received the proposed variation may adversely impact on any of the licensing objectives. Members may therefore consider delegating to officers authority to determine applications for minor variations.
11. There is no appeal against a refusal to grant a minor variation nor can a responsible authority or interested party that made representations appeal against a grant. The only courses open to an applicant are to seek to challenge the refusal by judicial review or to apply for a full variation. Responsible authorities and interested parties may challenge the Council's decision via judicial review or they may assess the impact of the variation after it has come into force and seek a review of the licence if the premises are not being run satisfactorily.
12. Until the Supervision of Alcohol Sales in Church and Village Halls &c Order came into effect on the 29 July 2009 community premises were treated exactly the same as any other premises with regard to alcohol licensing. Thus such premises were required to have a designated premises supervisor who was a personal licence holder if alcohol was to be sold.
13. The new regulations define community premises as being premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall, community or other similar building. For the new regulations to apply, the premises must be run by a management committee.
14. The new regulations provide for an alternative licence condition to be added to the licence in place of the requirement for a designated premises supervisor who is a personal licence holder. The condition is that every supply of alcohol under the premises licence must be made or authorised by the management committee.
15. On an application for a new licence to community premises if the authority is satisfied that arrangements for the management of the premises by the applicant are sufficient to ensure adequate supervision of the supply of alcohol then the alternative condition must be included in the licence. Only the police can object to the alternative condition and if doing so they must include in their representation a statement that due to the exceptional circumstances of the case they are satisfied including the alternative condition instead of the requirement for a designated premises supervisor would undermine the crime prevention objective. However, the licensing authority is entitled to form a different view.
16. I believe there are a number of community premises within the district which are not licensed because the management committee felt that the

requirements of having a designated premises supervisor who held a personal licence were unduly onerous. A number of such management committees may now be minded to apply for a premises licence (or if such a licence is held but does not include the sale of alcohol) for a variation to include the sale of alcohol. Those who do have designated premises supervisors may decide to apply to substitute the requirement for a designated premises supervisor with the alternative licence condition.

17. An application to vary to include the sale of alcohol cannot be dealt with under the minor variations provisions referred to above. A full variation will be required. Where application is made to substitute the requirement for a designated premises supervisor with the alternative licence condition whilst a full variation is required a reduced fee is payable.
18. Where the alternative licence condition is in place it is open to the Licensing Committee to re-introduce the requirement for a designated premises supervisor on a review of the licence. Similarly where a premises licence for community premises has a condition that there must be a designated premises supervisor the Licensing Committee may on review substitute the alternative licence condition although such a step may be unlikely where the circumstances are such that a review has been called for.

Risk Analysis

18.

Risk	Likelihood	Impact	Mitigating actions
The council is subject to proceedings for a judicial review in the absence of an appeal procedure.	1, the time and expense of the judicial review procedure is unlikely to prove attractive to applicants who would be more likely to apply for a full variation. Similarly responsible authorities and interested parties would be more likely to await events and apply for a review of the	3, A successful judicial review could expose the council to significant costs orders.	That where no representations are received the application is granted unless it falls within those categories of variation which cannot be dealt with under this procedure. Where representations are received from relevant bodies or interested parties which clearly relate to the licensing objectives the application should be refused.

	licence if need be.		
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.