

Item No. 10.	Classification: Open	Date: October 8 2009	Meeting Name: Licensing Committee
Report title:		Licensing Act 2003 (Premises Licences and Club Premises Certificates)(Miscellaneous Amendments) Regulations 2009	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION(S)

1. That the committee notes the legislative amendments and section 182 guidance provision to allow all applications for minor variations made under section 41 of the Licensing Act 2003 (as amended) to be determined at officer level (the Community Safety & Enforcement Business Unit Manager).
2. That the committee notes the intention to seek an amendment of the matters reserved to the licensing sub-committee to bring the constitution in line with these requirements.
3. That the committee identifies any issues to be addressed within the constitutional change process.

BACKGROUND INFORMATION

4. The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 came into force on 29 July 2009. The regulations amend the Licensing Act 2003 and the Licensing Act 2003 (Premises licences and certificates) Regulations 2005(b).
5. The regulations introduce a new simplified process for minor variations to premises licences and club premises certificates where such variations will not impact adversely on the licensing objectives.
6. The minor variations process provides for a short, simple consultation process with determination of the application within 15 working days. A note on the effects of the new process has been previously circulated to members of the committee.
7. No provision for public hearing of any contested application is made. Supplementary guidance issued by the Department of Culture Media and Sport (DCMS) under section 182 of the 2003 Act notes that the "Government recommends that decisions on minor variations should be delegated to licensing officers".
8. At present the council's scheme of delegation of decisions and functions to licensing committee, sub-committees and officers establishes that decisions on variation applications where representations are received should be taken by the licensing sub-committee.
9. Members are advised that, in accordance with DCMS guidance, a report is to be submitted to the officer governance working group, in the first instance, and thereafter to the member-level constitutional working panel and council assembly, seeking to amend that delegation in order to provide for determination of contested minor variation applications by the Head of Service (the Community Safety & Enforcement Business Unit

Manager). In the event that this proposal is approved by the council assembly, amendment will also be made to the appropriate internal scheme of delegation and policies and procedures will be established setting out clear guidance to officers to ensure consistent management of the process.

10. This report goes on to cover some of the main effects of the regulations and provide for further discussion on the management of the processes at the meeting. The committee is asked to address issues which it would wish to be taken into account during the constitutional change procedure.

KEY ISSUES FOR CONSIDERATION

Categories of application

11. Minor variations will generally fall into four categories
 - Minor change to the structure or layout of a 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
12. The DCMS guidance is helpful, however, in defining relevant forms of application. Some of the main points raised are set out in sections 12 – 15 below.

Minor change to the structure or layout of a premises

13. Applications under this category which are likely to have an adverse impact on the licensing objectives and which are therefore not suitable to be dealt with under the minor variations provisions include applications that:
 - Increase the capacity for drinking on the premises;
 - Affect access between the public part of the premises and the rest of the premises or the streets or public way; and
 - Impede the effective operation of a noise reduction measure such as an acoustic lobby.

Licensing hours

14. Applications to
 - Extend licensing hours for the sale or supply of alcohol for consumption on / off the premises between the hours of 23.00 and 07.00; or
 - 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 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.

15. Guidance advises that applications to vary the time during which other licensable activities take place should be considered on a case by case basis with reference to the likely impact on the licensing objectives being of paramount consideration. In such cases

guidance advises that officers should bring their own experience and knowledge of licensing to bear, taking all relevant factors, including relevant current licensing policy considerations, into account .

Licensing conditions

16. An application to remove a condition or vary the wording of a condition should normally be treated as a full variation application unless the condition is out of date, irrelevant or unenforceable.

Other

17. Guidance indicates that the government intends 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.

Minor variations process

18. Applicants wishing to apply for a minor variation are required to complete a pro-forma application to the licensing authority; pay a standard fee of £89; and advertise the application at the premises by way of a white notice, complying with the regulations, for a period of 10 working days commencing the working day after the application was given to the licensing authority.
19. On receipt of an application the licensing authority must consider whether the variation could adversely impact on the licensing objectives. It must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and take their views into account.
20. The licensing authority must then also consider any relevant representations received from interested parties within the specified time-limit.
21. If no relevant representations are received, the licensing authority must determine the application before the 15th working day after the day the authority received the application. Applications may be granted or refused. If no determination is made by that date the application is automatically treated as refused.
22. Deemed refused applications may be resubmitted as minor or major variations. Where an application is refused and resubmitted through the major variation process, the normal full notification and consultation procedures will apply.

Interim arrangements

23. Until such time that constitutional change may be approved contested applications for minor variations will be reported to the licensing sub-committee for determination, if an appropriate meeting is already arranged within the permitted 5 day period allowed. If no appropriate meeting is timetabled the application will not be determined and will be deemed refused. Insufficient time exists under this process for meetings to be timetabled specifically to consider minor variation applications.

Policy implications

24. The (second revision of the) Southwark Statement of Licensing Policy 2008 – 2011 was approved by council assembly in November 2008. Sections of the policy affected by the changes in the legislation are:

- Section 4 dealing with the “Administration, exercise and delegation of function” and includes a “table of delegation of functions”; and
 - Section 5 dealing with “Determining applications for premises licences and club premises certificates”.
25. Any amendments required to the licensing policy will be highlighted in the consultation on the next revision of the licensing policy. The consultation documentation will include advice and guidance on any constitutional change agreed for the benefit of the licensed trades and the general Southwark community.

Community Impact Statement

26. The 2003 Licensing Act sets out four licensing objectives. These are
- To prevent crime and disorder;
 - To ensure public safety;
 - To prevent nuisance; and
 - To protect children from harm.
27. Although this new process provides a simplified system for making minor variations to premises licences and club premises certificates, it is intended only for applications that have no adverse impact on the objectives.
28. The simplified process, however, progresses the government’s simplification agenda; removing unnecessary burdens on business but without affecting protections afforded local residents. The process retains provision for (limited) public consultation and the involvement of the responsible authorities where necessary.

Resource implications

29. It is not possible to gauge the take-up of the new minor variation process at this stage nor, therefore, the impact on the licensing service’s budget or resources. If the process becomes popular it does have the potential to provide some burden on resources, as the statutory £89 application fee is unlikely to cover the costs of negotiations over any concerns raised through the applications process. However, at this point in time it is anticipated that the impacts will be limited and work generated may be absorbed within existing resources. The position will be reviewed at the end of the financial year.

Consultation

30. No consultation has taken place in the preparation of this report. Attention is drawn to the comments made in section 25.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director for Communities, Law and Governance

31. The issues for consideration are clearly set out in the body of this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 The Licensing Act 2003 (Premises Licences and Club Premises Certificates)(Miscellaneous Amendments) Regulations 2009 Supplementary guidance issued under section 182 of the 2003 Act The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005(b) The Southwark Statement of Licensing Policy 2008-2011	Health Safety & Licensing Unit, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirtikula Read Phone number: 020 7525 5748

AUDIT TRAIL

Lead Officer	Strategic Director of Environment & Housing	
Report Author	Richard Parkins, Health Safety & Licensing Unit Manager	
Version	Final	
Dated	September 4 2009	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Executive Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	September 25 009	