

Item No. 9.	Classification: Open	Date: 9 March 2010	Meeting Name: Licensing Committee
Report title:		The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 & Licensing Act 2003 (Premises Licences and Club Premises Certificates)(Miscellaneous Amendments) Regulations 2009	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the committee considers the draft officer protocol for determination of applications, made under sections 41A-41C and 86A-86C of the Licensing Act 2003 (as amended), for minor variations of premises licences and club premises certificates that have no impact on the licensing objectives, and notes any issues that it requires to be addressed within the ongoing constitutional change process.

BACKGROUND INFORMATION

2. The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 & 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. The regulations include a new process for minor variations to premises licences and club premises certificates.
3. The strategic director of environment and housing reported the introduction of the regulations and an intention that all minor variation applications be determined at officer level, to the committee on October 8th 2009. The committee considered the report and resolved:
 1. "That the committee noted 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 (now) environmental health and trading standards business unit manager);
 2. That the committee noted 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 will be further consulted on the protocols put in place for officers to deal with minor variations; and
 4. That the committee agreed that any minor variations will be dealt with by a licensing sub-committee until the constitutional changes have been approved."
4. This report reports back on protocols to be put in place for officers to deal with minor

variations as required by the committee.

KEY ISSUES FOR CONSIDERATION

Minor variations to premises licences / club premises certificates

5. The new process is established to provide a simplified applications process for minor variations to premises licences and club premises certificates where such variations will not impact adversely on the licensing objectives. In effect these provisions relate to a relatively small number of applications. Applications for new premises licences, major variations of existing licences, licence reviews and TENs remain unaffected and will be considered by the licensing sub-committee in the normal way.
6. The detail of the new process has been previously circulated to members. However, in summary, 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.
7. 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.
8. The licensing authority must then also consider any relevant representations received from interested parties within the specified time-limit.
9. 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.
10. 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 applies.
11. No provision is made within the regulations for the public hearing of any contested application. 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”.

Categories of application

12. 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
13. The DCMS guidance is helpful, however, in defining relevant forms of application.

Some of the main points raised are set out in sections 14 - 21 below. A copy of the Guidance is reproduced at appendix A.

Minor change to the structure or layout of a premises

14. Many small variations to layout will have no adverse impact on the licensing objectives. Primarily these are likely to comprise cosmetic changes to existing layout plans arising from redecoration or refurbishment. For instance, a refurbishment might include the physical relocation of the bar within a public house. While this would require new plans to be submitted in order that the licence properly reflects the layout of the premises concerned, often such a re-arrangement will have no impact on means of escape, nor numbers accommodated; nor sound containment measures or other consideration relevant to the licensing objectives. Where, however, changes to layout do have potential impacts upon the licensing objectives these would be referred to the full variations process. 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.

Small adjustments to licensing hours

15. 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.
16. 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.
17. Variation applications which seek 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.

Licensing conditions

18. Licensing authorities have no ability to impose their own conditions on a licence through the minor variations process. Applicants may, however, volunteer conditions as part of the process.
19. 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.

The addition of certain licensable activities

20. Guidance indicates that the government's intention is that local licensing authorities should be prepared to consider accepting applications to add the provision of live music as a new activity to an existing licence under the minor variations process. Guidance does also recognise, however, that as in all other situations the authority must consider whether the application in question has any potential impact on the licensing objectives. Clearly, there may be situations where, for example, a restaurateur's proposal to provide an occasional acoustic solo musician to add ambience to his premises, may have little impact on local residents. However, equally clearly, another application to add live music to a premises licence, may effectively change the nature of that premises and turn it into a live music venue and in this circumstance there could be considerable potential impacts on local residents in terms of both noise nuisance and disturbance from customers. Local authorities are thereby advised to consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant and the views of the responsible authorities in gauging whether an application has potential impact on the licensing objectives would become particularly important. As in all other situations, if an application had potential to impact upon the licensing objectives it would not be agreed under the minor variations process.
21. Similarly, in some circumstances the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, may have no adverse impact on the licensing objectives and may be considered.

Officer protocol for determining applications

22. Effectively, there are three decision points involved in the minor variations process. These are
 - at the very start of the application process, as to whether the application properly falls within the parameters of the minor variations process (i.e. it falls within the categories of application identified as suitable for the minor variations process within the DCMS Guidance);
 - also at the very start of the application process, as to whether the views of one or more of the responsible authorities should be sought in determining whether the application under consideration has any potential impact on the licensing objectives; and
 - at the end of the consultation process, as to whether the application may be granted
23. A draft officer protocol has been drawn up setting out clear guidance to officers to ensure consistent management of the process. The protocol oversees the whole of the minor variations process, including how the questions that are raised within section 22 of this report should be considered. A copy of the draft protocol is attached at appendix B.
24. The protocol provides that each of the first two decisions set out in section 22 of this report shall be made by the area principal licensing officer in conjunction with a team leader (or in the team leader's absence the unit manager). The third and final decision will be taken by the area principal licensing officer in conjunction with a team leader and will be ratified by the unit manager on behalf of the business unit manager (or the business unit manager in the unit manager's absence). All decisions will be taken with reference to the DCMS guidance and with regard paid to all other relevant matters. All decisions will be recorded on the service database together with reasons for the

decision included; noted on the service website; and reported at intervals to members.

Moving forward

25. Members have been advised that, in accordance with DCMS guidance, a report is to be submitted to the member-level constitutional working panel and then to Council assembly, seeking to amend the Council's constitution in order to provide for determination of contested minor variation applications by the head of service (the Environmental Health and Trading Standards 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.
26. The committee is asked to consider the draft protocol and confirm that it adequately addresses the committee's previous concerns.
27. Until such time that constitutional change may be approved, it remains the case that contested applications for minor variations will be reported to the licensing sub-committee for determination at closed session, on the proviso that such an opportunity exists within the 5 day period allowed. If no appropriate meeting is timetabled the application will not be determined and will be deemed refused.

Policy implications

28. 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".
29. 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

30. 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.
31. 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.
32. 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

33. Initial take-up of the new minor variations process has been slow. While the process may not have been in place long enough to fully gauge longer term take-up it is anticipated that application numbers will continue to be low. If the process should grow in popularity, it does have potential to provide some burden on resources, as the statutory £89 application fee is unlikely to cover the costs of deliberations 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

34. No consultation has taken place in the preparation of this report. Attention is drawn to the comments made in section 29.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

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

Finance Director (Env/ET/140110)

36. The head of community safety and enforcement has confirmed that based on current activity levels costs arising from the adoption of the minor variations process will be fully contained within existing budgets. If there are significant changes in the activity levels, resulting additional costs will be considered for the following year's business planning and budgeting process.

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 Previous report dated 8 th October 2009 to Licensing Committee on the matter.	Health Safety & Licensing Unit, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirtikula Read Phone number: 020 7525 5748

APPENDICES

No.	Title
A	DCMS supplementary guidance issued under section 182 of the Licensing Act 2003
B	Draft officer protocol for determination of minor variations applications

AUDIT TRAIL

Lead Officer	Strategic Director of Environment & Housing		
Report Author	Richard Parkins, Health Safety & Licensing Unit Manager		
Version	Final		
Dated	1 March 2010		
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 Team			1 March 2010