

Licensing Committee and Sub-Committee – Constitutional amendments for minor variation applications

PART 3G: LICENSING COMMITTEE AND SUB-COMMITTEES, THE HEAD OF SERVICE AND OFFICER PANEL EXERCISING LICENSING FUNCTIONS

Role and functions

1. To approve the council's policies in respect of all licensing and registration matters except the licensing and gambling statements of policy.
2. To consider the future process by which the decisions with respect to licensing applications are to be taken.
3. To establish policies and procedures for considering and determining additional licensing functions conferred on the authority by statute.
4. To consider and determine the following applications:
 - the grant, renewal, variation or transfer of any general safety certificate in respect of a sports stadium or regulated stands
 - street trading and markets
 - film classification
 - any other licensing responsibilities of the authority created by statute and delegated to the committee.
5. Where appropriate to hear and consider the case for the applicant either by way of written or oral representation and consider objections and representations to the application from authorised persons and interested parties or their designated representatives.
6. To consider and determine the revocation of licences and registrations reserved to the licensing committee.
7. To consider the designation of new sites for street trading.
8. To establish sub-committees under the relevant statutory provisions empowered to discharge any and all of the authority's licensing functions.

Matters reserved for decision by the licensing committee

1. Approve the council's policies in respect of all licensing and registration matters, except the statement of licensing policy and the statement of gambling policy.¹

¹ The approval of the licensing and gambling statements of policy is a matter reserved to council assembly.

2. To establish policies and procedures for considering and determining additional licensing functions conferred on the authority by statute.

Matters reserved for decision by the licensing committee and its sub-committees

Licensing Act 2003

3. Any application for a personal licence which is the subject of a police objection.
4. Any application for a personal licence by a person with unspent criminal convictions.
5. Any application for a premises licence or a club premises certificate which is the subject of a relevant representation.
6. Any application for a provisional statement which is the subject of a relevant representation.
7. Any application to vary a premises licence or club premises certificate which is the subject of a relevant representation, except a minor variation.
8. Any application to vary a designated premises supervisor which is the subject of a police objection.
9. Any application for a transfer of a premises licence which is the subject of a police objection.
10. Any applications for interim authorities which are the subject of a police objection.
11. Any application to review a premises licence or club premises certificate.
12. Any decision to object when the local authority is a consultee and not the relevant authority considering the application.
13. Any determination of a police objection to a temporary event notice.

Gambling Act 2005

14. Any application for a premises licence where representations have been received and not withdrawn.
15. Any application for a variation to a licence where representations have been received and not withdrawn.
16. Any application for a transfer of a licence where representations have been received from the Gambling Commission.
17. Any application for a provisional statement where representations have been received and not withdrawn.
18. Any application to review a premises licence.

19. Any application for a club gaming/club machine permits where representations have been received and not withdrawn.
20. Cancellations of club gaming/club machine permits.
21. Decision to give a counter notice to a temporary use notice.

Other reserved decisions

22. Any application for the grant, renewal, variation or transfer of any sex establishment licence.
23. New designations for sites for street trading.
24. Revocation of street trading licences.
25. To determine the revocation of any licence following successful prosecution of the holder for breach of licence terms, conditions and restriction.
26. Any application for consent to provide hypnotism or like entertainment.
27. Any application for the grant, renewal, variation or transfer of any general safety certificate in respect of a sports stadium or regulated stands.

Matters delegated to the head of service and considered by the licensing officer panel

The panel to make recommendations to the head of service on the following matters:

1. All films submitted for local classification under the Cinemas Act 1985.
2. Any opposed application for the grant, renewal or transfer of a special treatments licence.

Matters delegated to the [relevant] head of service

1. Any minor variation to premises licences and club premises certificates where such variations will not impact adversely on the licensing objectives, falling into the following 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
 - The addition of certain licensable activities such as the addition of live music unless there is likely to be an adverse impact on the licensing objectives.

Notes

- a) All matters not reserved as above are delegated to the appropriate chief officer, head of service or business unit manager. All matters reserved to the licensing officer panel can always be decided by the licensing committee or its sub-committees.

- b) Each chief officer and/or head of service in making decisions under the above scheme is required to do so within the internal scheme of management for their own department. This will include appropriate monitoring arrangements, and dissemination of information both internally and externally to the council.

- c) Minor variations now fall under delegated authority following an amendment to guidance for section 41 of the Licensing Act 2003 (as amended) to be determined at officer level (as set out in the relevant departmental scheme of management).

Minor Variations – Background Information

Categories of application

1. Minor variations will generally fall into four categories
 - Minor change to the structure or layout of a premises;
 - Small adjustments to licensing hours, specifically excluding extending the terminal hour;
 - The removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and
 - The addition of certain licensable activities

Minor change to the structure or layout of a premises

2. 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

3. 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.
4. 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.
5. 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

6. 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.
7. 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

8. 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.
9. 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.

Summary of process for considering minor variation applications

10. 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.
11. 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.

12. The licensing authority must then also consider any relevant representations received from interested parties within the specified time-limit.
13. 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.
14. 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.
15. 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".
16. The final decision to grant an application 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. 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, with reasons for decisions included.
17. A draft officer protocol has been drawn up setting out clear guidance to officers to ensure consistent management of the process. The licensing committee on 9 March 2010 is reviewing this.

Interim arrangements

18. Until such time that the constitutional change may be approved, contested applications for minor variations will be reported to the licensing sub-committee for determination in 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.