

Agenda Item No.

**TO:** LICENSING COMMITTEE  
**DATE:** 27 AUGUST 2009  
**SUBJECT:** AMENDMENTS TO LICENSING ACT 2003  
**BY:** INTERIM HEAD OF LEGAL  
**Classification:** Unrestricted

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**Summary:** This report outlines the July 2009 changes to the Licensing Act 2003 relating to (a) applications for minor variations to Premises Licences and Club Premises Certificates and (b) supervision of alcohol sales in Community Halls. It recommends that decisions under the new arrangements be delegated to officers.

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**Implications:** Human Resources - Implications None

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Finance Implications - There may be a small decrease in fee income caused by a new reduced fee for minor variations.

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Legal Implications - None other than the implementation of the new legislation

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Crime & Disorder Implications - (Section 17) The Police must be notified of each application and can object on grounds of crime and/or disorder.

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Equalities & Diversity Implications - None

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Sustainability Implications - None

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Risk and Health and Safety Implications - No change

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Corporate Plan Implications – These reforms become part of the Licensing Act 2003 which is subject to the Council’s Licensing Policy, promoting a safer and stronger community.

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**Decision Required:** **That the Committee recommend that Council delegates all decisions under the new procedures to the Licensing Officer.**

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Introduction/Background

When the new system of alcohol and entertainment licensing by local authorities came into operation in 2005 some of its deficiencies quickly became apparent. For example, if licence holders wishing to make minor relatively insignificant changes to their licence or licensed activities, still had to go through the same lengthy and costly process as if they were proposing major changes or additions. Also the system for authorising and supervising alcohol in community premises, for instance, village halls, was not working effectively. Both of these problems have now been addressed by the Licensing Act 2003

(Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009.

### The New Legislation

#### (a) Minor variations to Premises Licences/Club Premises Certificates

New Regulations which came into force on 29 July provide for a simplified quicker and cheaper process for applications for minor variations to premises licences and club premises certificates.

#### Procedure

The new process for minor variations applications (under The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009) is an extremely truncated version of the full variation procedure, with the added difference that there is no provision for any hearing.

An abbreviated application form is submitted with the statutory fee (currently £89). There is a period of 10 days (starting the day after the application is received by the Council), during which representations are sought by advertisement on the premises, and written notice is given to the police who can object within the same 10 days. In the same period the Council has to adjudicate as to whether the proposed variation is a 'minor' one or not within the meaning of the legislation. Within the next 5 days the Council must decide whether to grant or not.

In the absence of police objection the application must be granted if it is considered that the variation would not have an adverse effect on the promotion of any of the four licensing objectives (Crime and disorder, Public safety, Public nuisance, Child protection). In all other cases it must be refused. If refused, the applicant's (reduced) fee must be repaid and he/she must re-apply using the full variation procedure with the usual fee.

The Regulations do not provide for a hearing. This timescale would not be consistent with the requirements of the Licensing Act 2003 (Hearings) Regulations 2005, and Guidance issued by DCMS has recommended that the power to determine a) whether the variation applied for does in fact constitute a minor variation, and b) whether that variation should be allowed, be delegated to the appropriate Licensing officer. (The statutory provisions are now Sections 41A to 41C of the Licensing Act 2003.)

Some guidance as to what is meant by a 'minor' variation is given in Annex A

(b) Community Premises

The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls) Order 2009 allow for applications to be made for the removal of the need to have a designated premises supervisor and personal licence holder for provision of alcohol in community premises.

A community premises are “premises that are or form part of a church hall, chapel hall, or other similar building or a village hall, parish hall or community hall or a similar building”. A building such as a school that is used for community events would not fall within this definition, as its primary purpose is education, unless it is widely used for the benefit of the community as a whole. Halls that are predominantly private venues hired out for community events are unlikely to fall within this definition.

In normal circumstances Section 19, Licensing Act 2003 imposes a condition on premises (other than bona fide members clubs) that all sale of alcohol must be approved by a personal licence holder and that there must be a designated premises supervisor (DPS) who is responsible for the day to day running of the premises. No sale of alcohol can be made whilst there is not a DPS or if the personal licence of the DPS is suspended.

Bona fide members clubs operating under a club premises certificate are exempt from this requirement, as it is assumed that responsibility for the running of the premises, including discipline, rests with a management committee

The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009 allows applications from community premises, where the premises licence is held by a management committee or board of individuals, to disapply the provisions of Section 19 above, so bringing them more in line with bona fide members clubs. This assumes that the management committee will fulfill the former role of the DPS as in members clubs.

Where a community premises applies for disapplication of the condition under Section 19, an alternative condition will be applied. This condition will state :- “Every supply of alcohol under the Premises Licence must be made or authorised by the Management Committee”, so making the licence holder (management committee) responsible for sale of alcohol on the premises.

Procedure

Community premises applying for a licence for the first time or varying an existing licence, and paying the full fee, can include an application to disapply at no extra charge. Otherwise an application solely to disapply to an existing licence which already covers the sale of alcohol can be made for a fee of £23.

The application is sent to the Licensing Authority and the police. The police may object within 28 days, and if they do there must be a hearing. In the absence of police objection the licensing authority (Council) decides. It might be expected that lack of objection would lead to automatic grant, but that is not so here. The Council should only grant if it is "satisfied that the arrangements for the management of the premises by the applicant are sufficient to ensure adequate supervision of the supply of alcohol on the premises" (although if the police have not objected, it might be assumed that they are not dissatisfied).

In order for Section 19 to be disapplied the licensing authority must be satisfied that there are suitable arrangements in place for the supervision of the sale of alcohol on the premises. This would include the arrangements for the hiring of the premises and hiring agreements.

Where a Chief Officer of Police for an area in which a community premises is situated objects to the alternative condition being substituted on grounds of crime and disorder, the Licensing Authority must hold a hearing. Similarly other responsible authorities or interested parties may object and a hearing must be held.

Where a review is held in respect of a community premises the Licensing Authority may re-impose the requirement under Section 19, Licensing Act 2003.

### **Recommendation**

1. To delegate powers under Sections 41A to 41C (minor variations) to the Licensing Officer.
2. To delegate power under Section 19 (4) (a) (community premises) to grant or refuse an application to disapply the requirement for a DPS.

M Hawkins – Ext 7325  
Report approved by -

17 August 2009

List of background documents – The Legislative Reform Orders

## **ANNEX A**

### **Meaning of Minor Variation**

A minor variation could be:

- A minor variation to the layout of the premises
- A variation to licensing hours subject to certain exclusions in relation to alcohol
- An application to remove a licensable activity
- The removal of conditions where they are in conflict with new legislation or the function of the premises have changed
- The addition of volunteered conditions
- Changes to names and address (but not identity) on the licence

A minor variation **is not**:

- An extension of the period for which the licence/certificate has effect
- A substantial variation in the premises included
- To specify in a licence an individual as Designated Premises Supervisor
- To add the retail sale/supply of alcohol as an activity authorised by the licence/certificate
- To authorise the retail sale/supply of alcohol at any time between 11pm and 7am
- To authorise an increase in the amount of time on any day during which there can be retail sale supply of alcohol

(a) A small variation to the layout of the premises that will have no adverse impact on the licensing objectives should be considered as falling within this regime. Any variation that does potentially have such an impact, be it as submitted or in conjunction with other previous variations must be refused and subject to a full variation application. Such adverse effects would include (but not exclusively):

- Increasing the capacity for drinking on the premises
- Affecting access between the public part of the building and the rest of the premises, the street or public way e.g. blocking emergency exits

(b) Applications to increase the hours for the sale or supply of alcohol are excluded from this process as is any application where, notwithstanding that there are no increase hours of the licensable activity, the variation results in alcohol being sold or supplied between the hours of 23:00 and 07:00. Such applications must be subject to the full process.

(c) Applications to remove a licensable activity would normally be subject to the new process.

(d) Applications to remove conditions where either the premises have changed their use (e.g. a requirement for door supervisors where a premises

has changed from a nightclub to a restaurant) or where legislation has made the need for the condition obsolete (e.g. a requirement for fire safety certificates have been superseded by the Regulatory Reform (Fire Safety) Order 2005).

(e) Often issues arise that are resolvable by the imposition of additional conditions and which are readily agreed by all parties. Under the existing process a Sub-Committee hearing a review or a variation must impose these. The new process will allow them to be attached without the need for a hearing.

(f) Changes to licences where a licence holder changes their name or the name of a company/club may also be covered by the new process.

In all cases the overall test is whether the proposed variation could have an adverse impact on any of the four licensing objectives. If there is any probability that this would be the case the application will be refused and a full variation required.