



Walsall Council

LICENSING AND SAFETY COMMITTEE

5TH March 2008

REPORT OF HEAD OF PUBLIC PROTECTION

Proposal to introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates – Consultation Paper

1.0 PURPOSE OF REPORT

- 1.1** The Government proposes to amend Parts 3 and 4 of the Licensing Act 2003 to make provision for a simplified process for 'minor' variations (changes) to premises licences and club premises certificates.
- 1.2** They have published a consultation document detailing their proposals together with three options. These are;

Option 1 – Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. **Leave licensing authorities to decide whether a variation is 'minor'** within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.

Option 2 – Amend the Act to introduce a new minor variations process as above, but **constrain licensing authority discretion by specifying** on the face of the Act **which variations should be included** in, and/or excluded from, a minor variations process. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.

Option 3 – No change.

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- 1.3** The purpose of the report is to explain the rationale behind the different options and identify the preferred option to respond to the government's consultation document.

2.0 RECOMMENDATION

- 2.1 Members of Licensing and Safety Committee are asked to consider the report and recommend to the department for culture, media and sport, their preference for the adoption of option 1. Together with the specific comments detailed below.

3.0 FINANCIAL IMPLICATIONS

- 3.1 Currently traders may not understand whether or not they need to submit an application for what they consider to be an insignificant variation. As such it is unknown whether the authority is losing application fees. On the other hand some traders will apply for minor variations and submit a full application fee. The suggestion that all minor variations should be submitted but attract a lower fee gives more clarification to both the trade and the authority.

4.0 POLICY IMPLICATIONS

- 4.1 Accords with council priorities ensure all people are safe and secure, and, strengthen the local economy.

5.0 LEGAL IMPLICATIONS

- 5.1 Legal Services have been consulted.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 None.

7.0 WARDS AFFECTED

- 7.1 All.

8.0 CONSULTEES

This consultation is being conducted in accordance with the Cabinet Office's Code of Practice on Written Consultation.

9.0 BACKGROUND

- 9.1 Section 34 of the licensing Act 2003 provides that the holder of a premises licence may apply to the relevant licensing authority for a variation of the licence. A variation is required for **any** change to the

licence, including changes to any feature shown on the plan of the premises. Section 84 of the Act makes comparable provision in relation to club premises certificates.

9.2 To apply for a variation, the licence holder must complete a prescribed variation application form and send it, together with the prescribed fee, the original licence or certificate and plan of the premises and the revised plan (if appropriate) to the licensing authority. They must also copy all documents to up to nine 'responsible authorities' (public bodies such as the police, fire and rescue authority, etc) and advertise the application in the local paper or newsletter and place a notice with details of the application at or on the relevant premises.

9.3 As long as the application to vary would not have the effect either of extending the period for which the licence has effect or varying substantially the premises to which the licence relates, the licensing authority must grant the application unless it receives relevant representations from interested parties (residents and businesses in the vicinity of the premises) or from any of the responsible authorities. Representations must relate to the four licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

9.4 If representations are received, the licensing authority must hold a hearing to consider them (unless all parties agree this is unnecessary) and take any steps it considers necessary for the promotion of the licensing objectives, including adding to or modifying the conditions of the licence or certificate or rejecting all or part of the application.

9.5 However, a significant number of applications to vary (approximately 30%) are for minor changes (such as the re-location of a bar, moving safety equipment to a more appropriate location, or adding the performance of a dance to a licence for a town square that already permits all other regulated entertainment) which are unlikely to impact in any significant way on the four licensing objectives.

9.6 On average, there are 20,000 variation applications per year across all licensing authorities of which, approximately 30% (6000) would be likely to be captured by a minor variations process. Applicants will range from large retail stores and national pub chains to sports, working men's and political clubs to village halls staffed by volunteers and small off-licences. A significant proportion of these premises will be small or medium sized enterprises.

- 9.7** The Government proposes that the 2003 Act is amended to make provision for a new 'minor' variations process. This would allow applicants to make small alterations to their licences or certificates for a fee and without having to advertise the variation or copy it to all responsible authorities. These measures would result in cost savings of £1.5 - £2.8 million/year to the trade, depending on which option is taken forward.
- 9.8** Fees are set by the Secretary of State at a level which allows the recovery of the legitimate and efficient costs to the licensing authority of administering the Act. The fee for a minor variation could therefore be expected to be lower than the current graduated fees charged for variations. The fee would be set by the Secretary of State by negative resolution statutory instrument under sections 55 (premises licences) and 92 (clubs) of the 2003 Act.
- 9.9** **Option 1** – This option might be expected to carry a slightly higher risk than Option 2 because it gives greater discretion to the licensing authority. There may also be concerns that it would lead to inconsistencies in interpretation between different licensing authorities and a resulting lack of clarity for interested parties, responsible authorities and the trade. However, in practice, the risk is likely to be minimal.
- 9.10** In the two years that the Act has been in place, licensing officers have accumulated valuable experience which should allow them, in the majority of cases, to arrive independently at informed and balanced decisions. To guide and support them in these decisions, the Government would provide a comprehensive supplement to the statutory Guidance to the Act which would set out general criteria and examples to illustrate when the minor variations process should apply. The requirement to consult relevant responsible authorities if necessary would provide a further filter to ensure that all cases were processed appropriately.
- 9.13** **Option 2** – In theory, this option leaves less room for error by the government specifying what is and/or is not a minor variation for the purposes of the Act and thereby constraining local authority discretion.
- 9.14** It could also be argued that Option 2 would provide greater assurance for interested parties that inappropriate variations will not slip into the minor variations process, and ensure a more consistent approach across all licensing authorities.
- 9.15** However, these potential benefits must be balanced against the fact that any definition of a minor variation, however carefully it is framed, will always exclude some variations that would not have an adverse impact on the licensing objectives and include some that do, to the detriment of the public interest, as defined.

9.16 For example, the evidence suggests that the majority of minor variations (approximately 70%) under the new process would consist of small changes to layout. A conservative definition of a minor variation could therefore be 'any change to the layout of a premises', with some caveats e.g. where this does not result in increased capacity for drinking or block fire exits. This very narrow definition would minimise risk of error and ensure a high degree of consistency across licensing authorities, **but it could result in inappropriate variations being dealt with through the minor variations process if the list of caveats were not 100% comprehensive.**

9.17 Option 3 – Officers have already identified that minor variations are problematic for the trade. If things remain as they are then this will have an unfair disadvantage on the trade. Walsall council wants to support the removal of unnecessary burdens with a view to encouraging a thriving economy.

10.0 SPECIFIC COMMENTS

10.1 To support the definition in option 1 the department for culture, media and sport should encourage regional liaison groups and LACORS to work together to seek consistency in what might constitute a minor variation.

10.2 The proposals allow licensing authorities ten working days to consider minor variation applications. There may be times when we need to consult with relevant responsible authorities. It is suggested therefore that the government increases this time limit to twenty working days.

CONTACT OFFICER

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Background Papers:

Legislative Reform Order: Proposal to Introduce a Simplified Process for Minor Variations to Premise Licenses and Club Premises Certificates.
Consultation paper from department for culture, media and sport.