



## Licensing Act 2003 - DCMS proposal to introduce new minor variations process

Following an initial consultation between November 2007 and February 2008, the DCMS have now set out their proposals to simplify the process involved in varying a premises licence in a Legislative Reform Order. A further consultation period ends on 1st September 2008, although no date has been set for the implementation of any changes thereafter.

The Government's proposal is to introduce a new simplified process for making minor variations to premises licences and club premises certificates where the licensing officer determines that it would not impact adversely on the promotion of the licensing objectives and subject to certain parameters and guidance referred to below. In such cases, it would be left for the licensing authority to decide which of the responsible authorities they would consult. For example, where an application involves minor structural works, the licensing officer might decide that only the fire officer should be consulted.

Under the new minor variations process, it will not be possible to extend the hours for the sale of alcohol between 11pm and 7am, or increase the sale of alcohol hours on any day, although they could be reduced. Other licensable activities, such as regulated entertainment, might be added using this simplified process, although this would also be subject to the licensing officer's determination that there is no adverse impact on the licensing objectives.

Similarly, certain structural or other changes in layout could be suitable for this simplified process provided the proposed alterations are not 'substantial'. There is still no definition of the word 'substantial' and hopefully this will be a commonsense decision on a case-by-case basis. Whilst it is likely that a significant increase in the licensed area would require either a full variation or indeed a new licence application, minor changes to the size of the bar servery or a refurbishment with new fixed furniture could be dealt with using the new process. However, the draft guidance to the Legislative Reform Order is an echo of the 'old' legislation for consent to alterations under Section 20 of The Licensing Act 1964. It states that changes to layout should normally be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises ;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
- impeding the effective operation of a noise reduction measure such as an acoustic lobby.

The guidance also warns authorities to be wary of the combined effect of a series of minor layout changes which cumulatively may impact on the licensing objectives and emphasises the importance of having an up to date plan of the premises.

The Order provides that licence conditions (including opening hours) can be amended or removed in some circumstances, although not where they have been imposed following representations at an earlier hearing. Conditions subject to agreement from, for example, the police, could possibly be imposed using the minor variations process. This could potentially remove the need in some cases for a police review of the licence or a formal 'enforced' variation application where the sole objective of the police is to impose conditions. Perhaps a useful benefit of the minor variations process would be to 'tidy up' the wording of ambiguous conditions on converted licences or for other improvements on existing conditions.

The existing full variation process requires both advertisement in a newspaper and notice display on the premises, together with an application fee ranging from £100 to £1050. If the simplified process is appropriate, then there are no advertising or display requirements and the fee is fixed at £73. In cutting red tape, the application form runs to a mere nine pages! The DCMS suggests that the potential for annual cost savings for the industry using the new process lies somewhere between £1.9 million and £2.5 million.

The proposal as drafted requires the licensing officer to make a decision under the simplified process within a period of 10 working days. However, where a decision is not forthcoming within this time, there is no sanction although it appears that no additional fee is payable if the minor variation application is re-submitted. Where a minor variation application is refused within the 10 day period, a full application with advertising and notice display must be made with the full application fee.

In considering whether to make a minor variations application, an applicant will obviously need to be conscious of the additional time involved and unless a very quick response can be obtained from the licensing officer in urgent cases it may be necessary to lodge a full variation application anyway.

The Order will be subject to 'negative resolution' following the end of the Consultation period and so will come into effect if no objection is made on a date to be specified. The Legislative Reform Order also proposes to remove the requirement for a Designated Premises Supervisor or Personal Licensee for Community Halls which we have not addressed in this briefing note.

As noted above, the touchstone in considering these applications is whether there would be any adverse impact on the promotion of the licensing objectives. There is no appeal against the licensing officer's decision, although no doubt he would consider representations on the issue. It is our experience that with a few notable exceptions, most licensing authorities are in fact dealing with minor structural alterations informally today for rather less than £73 and without a multi-page application being submitted. Bearing in mind the limitations of the process and the guidance to licensing authorities referred to above, it is difficult therefore to see how the cost benefits projected by the Government can in reality be achieved, although the new procedures will no doubt be useful in certain cases.

## Contact

For further information or advice, please contact:

Phil Crier	E: <a href="mailto:phil.crier@bllaw.co.uk">phil.crier@bllaw.co.uk</a>	T: +44 (0) 1489 555053
Jon Wallsgrove	E: <a href="mailto:jon.wallsgrove@bllaw.co.uk">jon.wallsgrove@bllaw.co.uk</a>	T: +44 (0) 1489 555281

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