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## **Gambling and Licensing Acts Committee**

**7 August 2009**

Report of the Director of Neighbourhood Services

### **Amendments to Licensing Act 2003**

#### **Summary**

1. This report advises members amendments to the Licensing Act 2003 in respect of minor variations of premises licences and club premises certificates and for the supervision of alcohol sales in church and village halls. The report also seeks revision to the delegations under the Act to be consistent with the legislative changes.

#### **Background**

2. The Licensing Act 2003 has been in force since the November 2005. During this period its operation and effectiveness has been under constant review. As a result of this scrutiny the government has now produced two amendments to the primary legislation under the Legislative and Regulatory Reform Act 2006. The first, a simplified process for minor variations to premises licences and club premises certificates. The second, the removal of the requirement for a designated premises supervisor and personal licence holder at community premises.

#### **The Legislative Reform (Minor Variations to premise Licences and Club Premises Certificates) Order 2009**

3. This Order became operative on 29 July 2009. The purpose of the order is to save time, money and regulatory resources by allowing variations that could not impair the licensing objectives to be made through a simplified process. All other more significant variations would be dealt with under the existing provisions.
4. Accompanying Statutory Guidance gives examples of minor variations that can be dealt with under these simplified provisions:
  - Small variations to the structure and layout that will have no adverse effect on the licensing objectives. The guidance suggests that changes which will increase capacity, affect access or egress or impede the operation of noise reduction measures are not appropriate for this process.
  - Removal of a licensable activity
  - Addition of a licensable activity (excluding the supply of alcohol) The provision of live music is encouraged.

- Variations to reduce licensing hours or to alter (without increasing) the hours between 07.00 and 23.00
  - Addition of volunteered conditions to the licence or certificate.
  - Amending or removing conditions in selective situations ie some embedded conditions, changes of circumstances, clarification of wording for ease of understanding compliance and enforcement.
5. In all cases, including the above, when an application for a minor variation is received the licensing authority must consider whether the variation could adversely impact on the licensing objectives. If it considers it does, the application must be refused.
  6. Under the simplified process the applicant is not required to advertise the local press but must display the notice on the premises. In this case the notice is white not blue. The notice must be displayed for a period of 10 working days starting on the day after the application was given to the licensing authority.
  7. In considering the application the licensing authority must consult the relevant responsible authorities if there is any doubt on the impact of the proposal. There is no requirement to consult all on each application. The authority must also consider any representations received from interested parties. Interested parties have 10 working days to make representation.
  8. The licensing authority must wait until the 10 days have elapsed and determine the application within the next 5 working days ie 15 days from the receipt of the application, with the effect that :
    - the minor variation is granted; or
    - the application is refused
  9. There is no right to a hearing and, where an application is refused, the application fee of £89 has to be returned to the applicant. An application which is not determined in the 15 working days will be treated as being refused. A refused application maybe resubmitted as a full variation which will allow for a hearing and appeals process.
  10. The Government recommends that decisions on minor variations should be delegated to officers. In order for this to happen the delegations set out in appendix 1 of the councils Statement of Licensing Policy needs to be amended to be consistent with this legislation. The Councils constitution delegates authority to this committee to make those changes.

### **Options and Analysis**

11. This is not adoptive legislation and it can be expected that licence holders will use this process to make minor amendments to their licences. Where an application is made the licensing authority must respond to it.

12. The timescales involved in determining the minor variation would not, even if members so wished, allow for a hearing to take place. That would also be against the spirit of this deregulatory legislation.
13. The government recommends that the determination of applications be delegated to officers. However if members were uncomfortable with this proposal, consideration could be given to building into the process consultation with the chair were representations are received. If this option is adopted then provision would have to be made for another member of the committee to be nominated in circumstances where the application was in the chairs ward or s/he is unavailable.
14. **Option 1** : Amend the delegations under the Licensing Act 2003 to authorise officers to determine all applications for minor variations.
15. **Option 2** : Amend the delegations under the Licensing Act 2003 to authorise officers to determine applications for minor variations where no representations are received and to consult with the chair (or nominated substitute) of the Gambling and Licensing Acts Committee prior to determining such applications in the cases where representations are received.

**The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009**

16. This Order became operative on 29 July 2009. It removes the requirement for a designated premises supervisor and personal licence holder at community premises where alcohol is supplied.
17. Normally, a premise licence that authorises the supply of alcohol must include the mandatory conditions which prohibit the supply of alcohol at any time when there is no designated premises supervisor (DPS) specified in the licence and require the sale of alcohol to be made or authorised by the holder of a personal licence.
18. This requirement has proved problematic nationally and here in York where many of these premises are operated by volunteers. Individuals in these circumstances are reluctant to take on the responsibility of being a DPS. This has resulted in premises having to apply for a series of temporary event notices (TEN's) to permit sales of alcohol at functions and events which is costly and time consuming.
19. This Order allows for the role of DPS to be effectively taken by a formally constituted management committee.
20. The application form requires the names of persons in key positions in the management committee to be specified and details of how the supply of alcohol will be supervised when the premises are used in different circumstances by different individuals or groups. Key changes to the committee should be notified to the licensing authority and the Police.

21. This arrangement maybe applied for at the time of the initial grant of a licence or subsequently by way of a variation to an existing licence. The police may make representation against this proposal for particular premises and if no agreement is reached between the parties a hearing will be held.
22. In situations where problems arise after the grant or variation of the licence the police can call for a review of the premises licence and, at a hearing, the mandatory conditions can be imposed.
23. For the purpose of this Order community premises means premises that are or form part of :
  - A church hall, chapel hall, or other similar building, or
  - A village hall, parish hall, community hall or other similar building
24. The Guidance indicates that where it is not clear if premises come under the definition of “community premises” then licensing authorities will need to consider how the premises are predominately used. If they are genuinely made available for community benefit most of the time and are accessible by a broad range of persons and sectors in the community the premises would most likely meet the definition.

## Options and Analysis

25. None applicable to this part of the report

### Consultation

26. None

### Corporate Strategy

27. The simplified process for minor licence variations helps reduce unnecessary bureaucracy and improves efficiency within the councils decision making process.

## Implications

28. **Financial** – The reduced fee for minor variations as opposed to the full process will see a reduction of income but this will reflect the reduced workload
29. **Human Resources (HR)** - None
30. **Equalities** - None
31. **Legal** - None
32. **Crime and Disorder** - None
33. **Information Technology (IT)** - None
35. **Property** – None

36. **Other** – None

## **Risk Management**

37. There are no increased risks to the council with respect to these changes in legislation.

## **Recommendations**

38. Members are asked to approve Option 1 : Amend the delegations under the Licensing Act 2003 to authorise officers to determine all applications for minor variations made under sections 41A and 86A of the Licensing Act 2003

39. Reason – To maximise the resource efficiencies available to the council by virtue of the deregulatory order for minor premises licence and club premises certificate variations.

40. Members are requested to note the amendments to the Licensing Act 2003 in respect to the supervision of the supply of alcohol at community premises

41. Reason – To keep informed of changes in relevant legislation

## **Contact Details**

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**Report Approved**

**Date** 22/July/2009

### **Specialist Implications Officer**

Legal – Sandra Branigan

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**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

### **Background Papers:**

Licensing Act 2003

Statement of Licensing Policy 2008

Revised Guidance issued under section 182 of the Licensing Act 2003

The Legislative Reform (minor Variations to Premises Licences and Club Premises Certificates) Order 2009  
The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009

**Annexes**

None