

LICENSING COMMITTEE – 20 OCTOBER 2009

COUNCIL – 10 NOVEMBER 2009

OFFICER RESPONSIBILITIES AND DELEGATIONS – MINOR VARIATIONS

Report of the: Community and Planning Services Director

Already considered by: Modern Local Government Group – 27 August 2009

Status: For Decision

Executive Summary:

A minor variations procedure has been introduced in order to allow operators to make small changes to their (Licensing Act) premises licences in England and Wales. The procedure was introduced as the financial cost to operators of making minor amendments to their licences was found to be disproportionate in view of the negligible impact such changes would have.

Only changes that would not undermine the licensing objectives are permitted under this procedure.

The Government recommends that the Local Authorities delegates decision making on Minor Variation applications to licensing officers. Responsible Authorities and interested parties, such as residents can make representations, which must be taken into account, but there is no Hearing. The Licensing Team will make Members aware of applications being processed.

Under s41A of The Licensing Act 2003, Sevenoaks District Council as Licensing Authority is required to consult with responsible authorities as it considers appropriate. It must take into account any relevant representations made by such authorities, together with any relevant representations made by an interested party. In the case of the latter, such representations must be made in writing within 10 working days following the date of receipt of the application by the Licensing Authority. In the case of responsible authorities, s41A does not prescribe a period within which the representations must be made, so it is therefore possible for such representations to be made at any time within the 15 day period we have for determining the application.

In practical terms, what this means is that the Licensing Authority may not know if an application has attracted any relevant representations until day 14 of the statutory period. This obviously does not allow sufficient time to convene a Committee, even in the case of representations being made by interested parties.

This report supports the Key Aim of safe communities

Portfolio Holder Cllr. Mrs Bracken

Head of Service Head of Environmental and Operational Services – Mr Richard Wilson

Recommendation: It be RESOLVED that the following delegation to the Community and Planning Service Director be approved

“To determine all applications for Minor Variations to premises licences/club premises certificates”

and that the Constitution (Part 13 – Delegation to the Community and Planning Service Director – Licensing) be amended accordingly.

Background

1. On 29 July 2009 a simplified process for minor variations to premises licences and club premises certificates was inserted into the Licensing Act 2003.

The Licensing Act 2003 has been amended by the insertion of sections 41A and 41C relating to minor variations.

Introduction

2. The minor variation process is **NOT** to be used to:
 - Extend the period for which the licence or certificate has effect;
 - Transfer the licence or certificate from one premises to another;
 - Specify, in a premises licence, an individual as the premises supervisor;
 - Add the sale by retail or supply of alcohol as an activity authorised by a licence or certificate;
 - Authorise the sale by retail or supply of alcohol at any time between 11pm and 7am;
 - Authorise an increase in the amount of time on any day during which alcohol may be sold by retail or supplied;
 - Include the ‘alternative licence condition’ referred to in section 41D(3) in a premises licence.

3. This process can only be used for Minor Variations that will not impact adversely on the promotion of any of the Licensing Objectives.
4. Variations could include:
 - Variations to licensable activities/licensing hours (with the exception of those points listed above relating to the sale of alcohol);
 - Variations to premises/club layout;
 - Revisions, removals and additions of conditions; and
 - Variations to opening hours.
5. The fee per application is £89, and notably if the application is not dealt with within 15 working days, the fee must be refunded.

The application procedure

6. Applications are made to the licensing authority on standard forms. The application must be advertised on a white notice at the premises. There is no requirement to advertise the application in a local newspaper and no requirement to notify the responsible authorities.

Timescale

7. The licensing authority must process the application and determine it within 15 working days.
8. The first 10 working days of the 15 working day period constitute a consultation period in which Interested Parties may make representations to the Licensing Authority. Licensing Authorities may also wish to consider the application and consult relevant responsible authorities during this time. A determination cannot be made during the 10 day consultation period.

Delegation

9. The Government recommends that the Local Authority delegates decision making on Minor Variation applications to licensing officers. There are no hearings under the minor variation process.

Role of responsible authorities

- 10 There is no requirement for applicants to notify responsible authorities of their application. Instead, responsible authorities are involved at the request of the Licensing Authority responsible for determining the application.
- 11 The DCMS Guidance suggests that Licensing Authorities “must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision.”

Role of interested parties (residents and other organisations/individuals)

- 12 Interested parties may make representations based on the licensing objectives. Representations do not trigger a hearing under the Minor Variations process, but the Guidance states relevant representations must be into account in the decision-making process.

Live music

- 13 DCMS is encouraging Licensing Authorities to encourage the growth of live music whenever appropriate and possible through the minor variations procedure.

Key Implications

Financial

- 14 Each Minor variation must be accompanied by a prescribed fee of £89.
- 15 The minor variation process will avoid the costs associated with holding a Licensing Committee hearing to consider an application.

Legal, Human Rights etc.

- 16 None.

Equality

17. Equality is not affected by the setting of Delegation to Minor Variation.

RISK ASSESSMENT STATEMENT

18. Without the Delegation for Minor Variations authorising Officers, Sevenoaks District Council would be unable to process applications quickly as stated in the Revised Guidance for the Licensing Act 2003 issued by the DCMS.

Sources of Information: <http://www.culture.gov.uk>

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**COMMUNITY AND PLANNING SERVICES DIRECTOR
KRISTEN PATERSON**

