

**Manchester City Council
Report for Resolution**

Report To: Licensing Committee – 25 August 2009

Subject: 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

Report of: Head of Street Management and Enforcement

Summary

On 29 July 2009, The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, and The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 came into effect.

The former introduces a simplified process for applicants to incorporate ‘minor’ variations to their premises licence or club premises certificate, subject to certain restrictions.

The second Order enables defined Community Premises to disapply the mandatory conditions on the premises licence requiring a Designated Premises Supervisor to be defined on the licence, and alcohol sales to be authorised by a personal licence holder, in substitution for a condition stating that all alcohol supplies must be supplied or authorised by the management committee.

Recommendations

Minor Variations

It is recommended that decisions on minor variations are delegated to the Head of Regulatory and Enforcement Services. This includes making decisions on which Responsible Authorities are consulted on applications and subsequently deciding whether to grant or refuse applications.

This delegation to be conditional upon the reporting of all decisions made on applications under this procedure to be provided to the Licensing Committee on a quarterly basis.

Disapplication of Mandatory Conditions for Community Premises

That Members note the contents of the report.

Wards Affected: All

| Community Strategy Spine | Summary of the contribution to the strategy |
|---|--|
| Performance of the economy of the region and sub region | The introduction of a minor variation procedure reduces financial costs on businesses, but still allows for consultation on applications that should have minimal impact on local communities. |
| Reaching full potential in education and employment | |
| Individual and collective self esteem – mutual respect | |
| Neighbourhoods of Choice | The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives, in relation to the Licensing Act these are the prevention of crime and disorder, the prevention of public nuisance, public safety, and the protection of children from harm. |

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

Financial Consequences – Capital

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Background documents

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact Fraser Swift..

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

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 – Explanatory Memorandum

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

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

Guidance issued under section 182 of the Licensing Act 2003

Supplementary guidance on:

- a simplified process for minor variations to premises licences and club premises certificates and;
- the removal of the requirement for a designated premises supervisor and personal licence at community premises.

1.0 Introduction

- 1.1 On 30 June 2009, the Secretary of State made The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.
- 1.2 This Order introduces a new simplified process for 'minor variations' to Premises Licences and Club Premises Certificates, as well as removing the requirement for a Designated Premises Supervisor to be specified on licences or certificates for community premises, through the disapplication of mandatory conditions applicable to those licences.
- 1.3 The new procedures came into force on 29 July 2009.

2.0 Background

Minor Variations

- 2.1 Prior to the implementation of the Order, a variation application under Section 34 of the Licensing Act 2003 was required for any change to the licence, including changes to any feature shown on the plan of the premises. The only exceptions were the transfer of the licence or variation of the Designated Premises Supervisor, which were and remain subject to simple notification procedures under the Act.
- 2.2 In accordance with Section 34 of the Licensing Act 2003, a variation application must be copied to all Responsible Authorities (as defined in the Act), as well as requiring advertisement in a local paper and by displaying a notice at the premises for 28 days.
- 2.3 The Government considered that this process was overly burdensome in respect of a significant proportion of changes that could be expected for licences, which by their nature, would be expected to have little or no impact on the licensing objectives.
- 2.4 In order to reduce the administrative burden on licence holders and to encourage applications to be submitted to licensing authorities for such small-scale changes, a 'Minor Variations' procedure was proposed.
- 2.5 The Government consulted on the following options from 31 November 2007 to 20 February 2008:

Option 1 (Government's recommended option):

Define a 'minor variation' as any change to a licence that will not impact on the four licensing objectives. Give licensing authorities complete discretion within this broad definition, to decide what is or is not a minor variation, subject to statutory Guidance and consultation with responsible authorities (the police, etc) if necessary.

Option 2:

Restrict or remove licensing authority discretion by specifying what is, and/or is not, a minor variation on the face of the Act. Consult responsible authorities as necessary.

Option 3: No change

- 2.6 The majority of respondents to the consultation agreed with the Government's recommended option, but a minority preferred Option 2 or 3 due to concerns that applicants would use the minor variation process to make changes that would adversely impact on residents and others in the vicinity. There were particular concerns about the possibility of varying a licence to add the sale or supply of alcohol or to extend hours during which alcohol could be sold or supplied.
- 2.7 The Government took account of these concerns in the proposal consulted upon from 4 August to 1 September 2008. 'Minor variation' became defined as any change to a licence that could not impact adversely on the four licensing objectives, with the following exclusions:
- the addition of the sale or supply of alcohol to a licence;
 - the sale or supply of alcohol at any time between 11pm and 7am;
 - and any increase in the amount of time on any day during which alcohol may be sold or supplied
- 2.8 With these exceptions, it was considered that licensing authorities would have discretion within this broad definition to decide whether a variation is minor or not, subject to consultation with relevant responsible authorities and having regard to the statutory Guidance.
- 2.9 However, The House of Lords Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee were both concerned that the Order did not contain a mechanism whereby local people could make representations about the likely effect of the application. This has been addressed by requiring Applicants to display a notice at the premises and interested parties will have an opportunity to make representations to the licensing authority.

Disapplication of Mandatory Conditions for Community Premises

- 2.10 Section 19 of the Licensing Act 2003 specifies that where a premises licence authorises the supply of alcohol, the licence must include two conditions. The first is that no supply of alcohol may take place under the premises licence at a time when there is no designated premises supervisor in respect of the premises licence. The second is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 2.11 Between 8 August – 31 October 2007 the Government consulted on the following options:

Option 1:

- (a) Disapply the two mandatory conditions (currently required by section 19 of the Licensing act 2003) relating to personal licence holders and designated premises supervisors in respect of premises licences authorising sales of alcohol at village halls, church halls, chapel halls and similar premises.
- (b) Give responsibility for authorising every sale of alcohol at the premises to the holder of the premises licence.
- (c) Do not allow such conditions to be imposed on the premises licence in any circumstances.

Option 2:

- (a) Disapply the two mandatory conditions (currently required by section 19 of the Licensing act 2003) relating to personal licence holders and designated premises supervisors in respect of premises licences authorising sales of alcohol at village halls, church halls, chapel halls and similar premises.
- (b) Give responsibility for authorising every sale of alcohol at the premises to the holder of the premises licence.
- (c) Following any review by the licensing authority of such a premises licence on grounds relating to the four licensing objectives, give the licensing authority discretion to impose conditions similar to those in section 19 of the 2003 Act where necessary for the promotion of the four licensing objectives.

Option 3 (The Government's preferred option):

- (a) Allow relevant premises licence holders (or prospective premises licence holders) to apply for the disapplication of the two mandatory conditions (currently required by section 19 of the Licensing act 2003) relating to personal licence holders and designated premises supervisors in respect of premises licences authorising sales of alcohol at village halls, church halls, chapel halls and similar premises.
- (b) Where an application is granted, give responsibility for authorising every sale of alcohol at the premises to the holder of the premises licence.
- (c) Following any review by the licensing authority of such a premises licence on grounds relating to the four licensing objectives, give the licensing authority discretion to impose conditions similar to those in section 19 of the 2003 Act where necessary for the promotion of the four licensing objectives.

Option 4: No change.

- 2.12 Overall, the majority of respondents agreed with the Government's proposal to remove the requirement for a DPS and personal licence holder for village halls and similar community premises. Only 14 (12%) believed that there should be no change (option 4).
- 2.13 A second consultation was held between 4 August – 1 September 2008, which principally considered practical aspects in administering the proposed procedure.

3.0 Applying the New Procedures in Practice

Minor Variations

- 3.1 Only small variations that will not impact adversely on the licensing objectives will be subject to the simplified 'minor variations' process. On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.
- 3.2 In considering the application, the licensing authority **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. For instance, Environmental Health would be consulted on an application with possible public nuisance implications.
- 3.3 Under this process, the applicant is not required to advertise the variation in a newspaper or circular or copy it to responsible authorities. However, they must display it on a white notice (to distinguish it from the blue notice used for full variations and new applications). The notice must comply with the requirements set out in regulations. In accordance with those regulations, the notice must be displayed for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority.
- 3.4 The licensing authority must also consider any relevant representations received from interested parties within the time limit referred to below. As stated earlier in this Guidance, representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives. In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.
- 3.5 Interested parties have ten working days from the 'initial day', i.e., the day after the application is received by the licensing authority, to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, beginning on the first working day after the authority received the application, with effect either that:
- the minor variation is granted; or,
 - the application is refused.
- 3.6 If the licensing authority fails to respond to the applicant within 15 working days (as defined by the Licensing Act 2003), the application will be treated as refused and the authority must return the fee to the applicant forthwith. However, the licensing authority and the applicant may agree instead that the

undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.

3.7 Where an application is refused and is then re-submitted through the full variation process, the full 28 days notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all responsible authorities (in accordance with the regulations applicable to full variations).

3.8 Minor variations will generally fall into four categories:

- minor changes to the structure or layout of a premises;
- small adjustments to licensing hours;
- the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and
- the addition of certain licensable activities.

In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.

3.9 Variations to:

- extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
- to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises

are **excluded** from the minor variations process and must be treated as full variations in all cases.

3.10 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. Where it is considered that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, the application should be refused.

3.11 There is Guidance, approved by parliament, in relation to factors that should be taken into account when considering the likely effect of an application upon the licensing objectives. However, it is recognised that such factors are not exhaustive and that 'licensing officers should bring their own experience and knowledge of licensing to bear when considering applications'.

Disapplication of Mandatory Conditions for Community Premises

3.12 This Order allows certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition "Every supply of alcohol under the premises licence must be made or authorised by the management committee", instead of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act.

3.13 An application can only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of

the premises (the “management committee”).

- 3.14 If such an application is successful, the effect of the alternative licence condition will be that the licence holder (i.e. the management committee) is responsible for the supervision and authorisation of all alcohol sales made pursuant to the licence. All such sales will have to be made or authorised by the licence holder. There will be no requirement for a Designated Premises Supervisor or for alcohol sales to be authorised by a personal licence holder.
- 3.15 The Order defines community premises as 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 other similar building. While it is considered that there may be issues relating to whether a premises is a community premises with a proper management committee, it is not thought that there should be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place.
- 3.16 Where it is a new application, there is an option to substitute the alternative condition. Where it is an existing licence, the application procedure is similar to the existing procedure for variation of the Designated Premises Supervisor.
- 3.17 Clear guidance is provided to define ‘community premises’ to ensure that only those premises that are intended to benefit would be allowed to do so.
- 3.18 Additionally, the application is subject to consultation with the police who may object to the removal of mandatory conditions or, should problems occur at a premises that has previously had the conditions disapplied, the police can apply for the conditions to be re-instated by way of a review of the licence under section 52A of the Licensing Act 2003. If the Chief Officer of Police issue a notice seeking the refusal of the application to include the alternative licence condition, the licensing authority must hold a hearing in order to reach a decision on whether to grant the application.
- 3.19 The police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition in cases where they have objected to it. Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing. Following a review of the licence in which the mandatory conditions are reinstated, the licence holder may appeal against the decision. If the alternative licence condition is retained on review, the applicant for the review or any person who made relevant representations may appeal against the decision.

4.0 Particulars for Consideration

- 4.1 As explained in 3.5 above, the time restrictions in respect of this procedure are very short - applications for minor variations must be determined within 15 working days from when the application is made, and Responsible Authorities have only 10 working days to make a representation in respect of the application. Therefore, decisions on which Responsible Authorities are to be

consulted will need to be made at the earliest opportunity to facilitate the process.

- 4.2 This procedure is intended to apply only to low-risk applications that would be considered to have no impact on the licensing objectives. There is no hearing process and where it would be considered that the application would adversely impact on the licensing objectives, the application would be refused and a full variation be required.
- 4.3 However, decisions will need to be made to grant or reject applications in cases where representations are made against it and those where they are not. Representations made by Responsible Authorities (upon consultation) and Interested Parties would need to be considered to be relevant, which is no different to the current position in respect of representations made against new and full variation applications.
- 4.4 The delegation of functions by the Licensing Committee in relation to decisions made under this procedure needs to be stated.
- 4.5 The Government recommends that decisions on minor variations should be delegated to licensing officers (paragraph 8.36 of the revised Guidance issued under s182 of the Licensing Act 2003).

5.0 Contributing to the Community Strategy

(a) Performance of the economy of the region and sub region

The introduction of a minor variation procedure reduces financial costs on businesses, but still allows for consultation on applications that should have minimal impact on local communities.

(d) Neighbourhoods of Choice

The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives, in relation to the Licensing Act these are the prevention of crime and disorder, the prevention of public nuisance, public safety, and the protection of children from harm.

6.0 Key Policies and Considerations

(c) Legal Considerations

All applications have to be processed in accordance with the requirements of the legislation. The Licensing Act is prescriptive in terms of the procedure to be adopted in terms of applications for minor variations.

7.0 Conclusion

Minor Variations

- 7.1 It is recommended that decisions on minor variations are delegated to the Head of Regulatory & Enforcement Services . This includes making decisions on which Responsible Authorities are consulted on applications and subsequently deciding whether to grant or refuse applications.
- 7.2 That the committee request officers report all decisions made on applications under this procedure to the Licensing Committee on a quarterly basis.

Disapplication of Mandatory Conditions for Community Premises

- 7.3 That the Committee note the contents of the report in respect of the legislative changes relating to licensing requirements at community premises.