

Licensing Act 2003

Variation of Licences: Minor Variations

What are the proposed changes?

With effect from 29 July 2009, the Licensing Act 2003 (“the Act”) is amended to permit small variations to premises licences or club premises certificates that will not impact adversely on the licensing objectives.

These changes introduce a simplified “minor variations” process as opposed to the more comprehensive variation process currently provided for in the Act.

Why have these changes been introduced?

The purpose of the changes is to save time, money and regulatory resources by allowing variations to premises licences or club premises certificates that could not have an impact on the promotion of the licensing objectives.

Under what circumstances can this new procedure NOT be used?

An application to vary a licence or certificate cannot be made under these new procedures for the following:

- To extend the time period for which the licence or certificate has been granted for;
- To substantially vary the premises concerned;
- To specify an individual as the premises supervisor
- To add the sale by retail or supply of alcohol as a licensable activity;
- To authorise the sale by retail or supply of alcohol at any time between the hours of 11pm and 7 am; or
- To increase the amount of time on any day during which alcohol may be sold by retail or supplied; or
- To include the alternative licence condition that may be applied in relation to the variation of premises licence: supply of alcohol from community premises.¹

Is there an application form and what is the fee?

An application under the new process will be subject to a standard application form and a fee of £89.00

¹ See section 41D(3) of the Act.

Does the application need to be advertised?

Under this type of variation application, the applicant does NOT have to advertise the application in a newspaper or circular or copy it to the responsible authorities.

However they DO have to display it on a white notice (in order to distinguish it from a full variation and new applications).

The information contained within the notice will be subject to regulations.²

How long must the notice be displayed for?

The notice must be displayed on the premises for a period of ten working days starting on the next working day after the application is given to the Licensing Authority.

What must the Licensing Authority do upon receipt of the application?

When an application is made for a minor variation, the Licensing Authority must:

- Consult any of the responsible authorities as it considers appropriate; and
- Take into account any comments made by those authorities in relation to 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 example – they may need to consult the environmental health officer on an application with possible public nuisance implications.

However, there is no requirement to consult all responsible authorities on each application and in many cases the Licensing Authority may be able to make a decision without consultation.

What about representations from interested parties?

The Licensing Authority must also consider any relevant representations received from interested parties within the prescribed time limit – 10 working days starting from the day after the application was made.

Representations will only be considered 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.

For minor variation applications, there is no right to a hearing but Licensing Authorities must take any representations into account when making a decision.

² Regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI2005/42).

How long will it take the Licensing Authority to make a decision?

As mentioned above, interested parties have 10 working days within which to submit representations and the Licensing Authority must wait until this time period has elapsed before it can determine the application.

However, the Licensing Authority must make a decision by no later than 15 working days (beginning on the next first working day) after the authority received the application. The decision must either be that:

- The minor variation is granted; or
- The application is refused.

Does the Licensing Authority have to give formal notice of grant or refusal of the minor variation?

Yes. If a minor variation application is granted or rejected, the Licensing Authority must forthwith give a notice to that effect to the applicant. This notice must specify:

- Any variation of the licence or certificate which is to have effect as a result of the grant of the application; and
- The time at which that variation takes effect.³
- In the case of a rejection of an application, the notice must include a statement by the Licensing Authority of the reasons for its decision.

What happens if the Licensing Authority does not respond to the applicant within 15 working days?

The application will be treated as refused and the Licensing Authority must return the fee to the applicant forthwith.

However, to save further delays and inconvenience to both parties, it may be the case that the Licensing Authority and applicant could instead mutually agree that the undetermined application could be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.

What happens if the minor variation application is refused?

In cases where an application has been refused and is re-submitted via the full variation process, the full 28 days notification period will apply from the date the new application is made and will need to be advertised in the press and on the premises (blue notice) as well as being copied to all the responsible authorities. The full variation fee will also be payable.

³ The time will be that specified in the application or, if that time is before the applicant is given the notice, such later time as the authority specifies in the notice.

General guidance notes⁴

1. 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.
2. **In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.**

Changes to structure/layout

3. Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should 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.
4. Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available.
5. An application to remove a licensable activity should normally be approved as a minor variation.
6. Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.
7. The Act covers a wide range of other licensable activities and licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant.
8. For example, the addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. Licensing authorities will need to consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is very much the Government's

⁴ As set out in the Statutory Guidance issued under section 182 of the Licensing Act 2003.

intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.

9. Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.
10. In considering applications to add licensable activities, licensing authorities and officers may find it helpful to consider the following factors:
 - the nature of the licensable activity;
 - proximity of the premises to residential areas;
 - any licence conditions volunteered by the applicant to mitigate the impact of the activity;
 - whether alcohol is sold at the premises when the licensable activity is taking place; and whether it will continue to be sold during the extended period. For example, a pub that applies to stay open an extra hour after the sale of alcohol has ended to sell hot drink and food could be considered to benefit the promotion of the licensing objectives;
 - track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives, or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
 - proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

This is not an exhaustive list and licensing officers should bring their own experience and knowledge of licensing to bear when considering applications.

Licensing hours

11. 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. Applications to reduce licensing hours for the sale or supply of alcohol or to or move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

12. Applications to vary the time during which other licensable activities take place should be considered on a case by case basis with reference to the likely impact on the licensing objectives. In arriving at a decision, licensing authorities may wish to consider the following factors:

- the nature of the licensable activity;
- the extent of additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- proximity of the premises to residential areas;
- any licence conditions already in place to mitigate the impact of the activity; any additional conditions volunteered by the applicant;
- arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?
- whether the proposed extension applies only on the weekend or also during week days;
- whether there will be new admittances during that period;
- track record of the establishment whether positive or negative, e.g. complaints related to the licensing objectives, any enforcement action or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- whether the premises is already open during the extended period for other licensable activities;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

These factors are not an exhaustive list and licensing authorities and officers should bring their own experience and knowledge of licensing to bear when considering applications.

Licensing conditions

a) Imposed conditions

13. Licensing authorities cannot impose their own conditions on the licence through the minor variations process. If the licensing officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, they should refuse it.

b) Volunteered conditions

14. Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority.
15. For instance, there may circumstances when the licence holder and a responsible authority such as the police or environmental health authority, agree that a new condition should be added to the licence. For example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal. Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the

licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the responsible authority have come to a genuine agreement. The licensing authority should be alive to any attempts to pressure licensees into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, should discuss this with the relevant parties.

c) Amending or removing existing conditions

16. Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition should be treated as a full variation.
17. However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.
18. Changes in legislation may invalidate certain conditions. For instance, the recent Regulatory Reform (Fire Safety) Order 2005 annulled all fire safety related conditions imposed on licences purely for fire safety reasons. Although the conditions do not have to be removed from the licence, licensees and licensing authorities may agree that this is desirable to clarify the licensee's legal obligations.
19. There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the licensing authority to enforce it.

Full variations process

20. Any other changes to the licence require an application to vary under section 34 of the Act.
21. Licensing authorities will wish to consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the plan under section 17 of the Act, but have nevertheless been included, for example, moveable furniture (altering the position of tables and chairs) or beer gardens (installation of a smoking shelter that will not affect the use of exits or escape routes).
22. However, it should be noted that a section 34 application cannot be used to vary a licence so as to:
 - extend a time limited licence; or to
 - transfer the licence from one premises to another.

23. If an applicant wishes to make these types of changes to the premises licence they should make a new premises licence application under section 17 of the Licensing Act 2003.

Club Premises Certificates

24. The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives.