

<b>17 November 2009</b>		<b>ITEM 5</b>
<b>Licensing Committee</b>		
<b>THE LICENSING ACT 2003 – NEW PROCEDURE FOR MINOR VARIATIONS</b>		
<b>Portfolio Holder:</b> Councillor Ben Maney, Public Protection		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> No	
<b>Accountable Head of Service:</b> Lucy Magill, Public Protection		
<b>Accountable Director:</b> Bill Newman Corporate Director Sustainable Communities		
<b>This report is Public.</b>		
<b>Purpose of Report:</b> To inform the Committee of amendments to the Licensing Act 2003 and recommend changes to the scheme of delegation.		

Comment [s]: PLEASE CLICK THIS BOX ONCE and enter the date of the meeting (in font 16, not capitals)

Comment [T]:

Comment [s]: Please leave this for completion by Democratic Services

Comment [s]: PLEASE CLICK THIS BOX ONCE and enter the name of the Committee you are reporting to (in font 16, not capitals)

Comment [s]: Please state the name of the Cabinet Member and the Portfolio to which the report refers

Comment [s]: Please enter details of any Wards and Communities affected by the report. If this section is not applicable, you should enter "none".

Comment [s]: Yes/No/Not Applicable – a 'Key Decision' is generally one affecting more than 2 wards or above £50,000 expenditure – see Guideline 2.7

Comment [sj]: Please state the Head of Service's name and job title

Comment [sj]: Please state Director's name and job title

Comment [sj]: State whether your report is Public or Exempt. If Exempt (i.e. not to be given to the public or discussed in

Comment [sj]: Briefly set out the purpose of your report

Comment [sj]: Please provide a summary of the key points in your report

Comment [s]: The recommendations should be set out in bold in the form of the decision that the decision

**EXECUTIVE SUMMARY**

The Government has introduced changes to the Licensing Act 2003 to enable minor variations to be made through a less bureaucratic and less costly scheme. These changes will require an alteration to the scheme of delegation in the Council's Constitution.

**1. RECOMMENDATIONS:**

- 1.1 That the Sub-Committee agrees -**
- a) That the amendments to the Licensing Act 2003 in relation to minor variations be noted; and**
  - b) That the Head of Public Protection be delegated the power to grant or refuse applications for minor variations; and**
  - c) That the Council's Constitution be amended to reflect the delegation to the Head of Public Protection to grant or refuse applications for minor variations.**

**2. INTRODUCTION AND BACKGROUND:**

- 2.1 The Government has amended the Licensing Act 2003 ('the Act') to permit licensed premises and clubs to make minor variations to their licence, that do not impact adversely on any of the licensing objectives, without going through the costlier process of a full variation. The changes also ease the rules relating to the sale of alcohol for community premises by removing the need to have a designated premises supervisor.
- 2.2 The Act has been amended by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 ('the Order'). This introduces a simplified process for minor variations to premises licences and club premises certificates. (**Appendix A**)
- 2.3 Prior to the Order coming into effect, the only way a licence holder could make any variation to their licence or club premises certificate was to go through the full variation process. This involved paying a fee based on the non-domestic rateable value of the premises, advertising the application in the local press for 28 days and sending copies to all the responsible authorities. This can be an expensive process, especially in view of the cost of an advert in a local newspaper.
- 2.4 In addition, if a responsible authority or interested party made a relevant representation the application would have to proceed to a full hearing. This could mean that a final determination could take up to two months.
- 2.5 The new process will work in the following manner –
- An applicant is required to submit an application to the Licensing Authority and pay the prescribed fee of £89.
  - The applicant will be required to display a white A4 notice at the premises for a period of ten working days, giving details of their application.
  - On receipt of the application the Licensing Authority must consult with the responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and take their views into account when determining the application. There is no obligation to consult all responsible authorities on each application and it is anticipated that, in many cases, the Authority may be able to make a decision without consultation.
  - The Licensing Authority must also take into consideration any representations from interested parties that have been submitted during the first ten working days (the consultation period).
  - The Licensing Authority must determine the application no later than 15 working days calculated from the day after the application is received. However, the Authority may not determine the application until the consultation period has ended thus leaving five working days to make the determination.

Comment [s]: You should briefly explain why the report is on the agenda - See para. 5.3 and 5.4 of the report writing guidelines.

- The licensing Authority may either grant or refuse the application. It cannot impose any additional conditions on the licence and there is no right of appeal against the determination.
- If representations are deemed to be relevant to the licensing objectives the application must be refused. The applicant may re-submit their application as a full variation and follow the relevant procedures and timescales for such an application.
- If an application is not determined within 15 working days it will be deemed refused and the Authority must return the fee to the applicant. However, the applicant and the Authority may then agree that the un-determined application may be treated as a new application and the original fee be treated as the fee for the new application.

### 3. **ISSUES AND/OR OPTIONS:**

- 3.1 The new minor variations procedure is designed to enable licensees to make small changes to their licence quickly, cheaply and with a minimum of bureaucracy.
- 3.2 The Order does not define a 'minor variation'. The Guidance states that a minor variation will generally fall into four categories -
- minor changes to the structure or layout of the premises;
  - small adjustments to the licensing hours;
  - the removal of out of date, irrelevant or unenforceable conditions or the addition of volunteered conditions; and
  - the addition of certain licensable activities.
- 3.3 The Order states that the minor variation procedure cannot be used if the application is –
- to extend the period for which a premises licence has effect;
  - to vary the premises substantially;
  - to change the Designated Premises Supervisor;
  - to add the sale of alcohol as a licensable activity;
  - to authorise the sale of alcohol at any time between 11 pm and 7 am;
  - to increase the amount of time on any day during which alcohol may be sold.
- 3.4 There are no hearings under the minor variation process. The Guidance recommends that decision making on minor variations is delegated to officers to ensure a speedy response and determination of applications. Officers currently have powers to grant unopposed applications. To enable this

**Comment [s]:** Other headings may be appropriate. The report should outline the reasoning that leads to its recommendations and **must** include:

1. a brief summary of options considered;
2. consultation outcomes
3. a risk assessment.
4. Whether the responsible cabinet members have been consulted/contributed to the report (NB professional and political advice must be clearly distinguished)

- See para.5.5 of the report writing guidelines.

procedure to work as required by legislation, the power to grant or refuse a minor variation application will have to be delegated to officers.

- 3.5 If there are representations that are relevant, the variation is one that is not permitted, or might impact adversely on the licensing objectives the application will have to be refused. If the applicant wishes to pursue his request for a variation, they will have to make a full variation application when the matter could be referred to a hearing.
- 3.6 There is no right of appeal against the refusal of a minor variation.

4. **CONSULTATION (including Overview and Scrutiny, if applicable)**

- 4.1 As this change is prescribed by legislation consultation is not required.

5. **IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

- 5.1 Section 17 of the Crime and Disorder Act 1998 places a duty on local authorities to do all that it can to prevent –
  - (a) crime and disorder in its area (including anti-social behaviour and other behaviour adversely affecting the local community), and;
  - (b) the misuse of drugs, alcohol and other substances in its areas.

This has been considered and it is felt that Section 17 will be engaged in each application during the consideration of the impact on the licensing objectives.

6. **IMPLICATIONS**

6.1 **Financial**

Implications verified by: **Michael Jones**  
 Telephone and email: **01375 652772**  
**mxjones@thurrock.gov.uk**

The fee payable under this process is prescribed by legislation and the Licensing Authority has no discretion over it. There is potential for a loss of income to the Council by virtue of the fact that licence holders applying under the minor variation procedure will be paying less than under the full variation procedure.

**Comment [j]:** This should include any consultation with Ward Members and Shadow Portfolio Holders, as well as any public or statutory consultation

**Comment [a]:** Please refer to Section 5.7 of the Report Writing Guidelines

**Comment [sj]:** This section should always be completed – if they are dealt with fully in another part of the report, they also need a brief cross reference here. The names and job titles of the officers providing the implications should be provided in full – see Guideline 6.1 and please note Democratic Services Deadlines and ensure that officers providing implications are given 5 clear working days to work on the report. Authors can write implications but they must be signed off by the appropriate officers

**Comment [sj]:** See Guideline 6.2

6.2 **Legal**

Implications verified by: **Maureen Ogbu**  
 Telephone and email: **01375 65  
 mogbu@thurrock.gov.uk**

1. The Order inserts the following sections: sections 41A, 41B, 41C, 86A and 86B
2. Section 41A deals with application for minor variations of premises licence and provides that the holder of a premises licence may apply under this section instead of under section 34 to Thurrock Borough Council as a relevant authority for variation of the licence and section 41B applies where the relevant licensing authority receives an application made under section 41A.
3. In determining an application Thurrock Borough Council as a relevant authority must consult such of the responsible authorities under sections 13 and 69 of the Licensing Act 2003 as it considers appropriate, and take into account any comments made concerning the application by those authorities.
4. Section 41C provides that notice must be given to an applicant of the application being granted or rejected; Thurrock Borough Council must include in the notice a statement by the authority of the reasons for its decision.
5. Thurrock Borough Council as a relevant authority must grant an application under the new provisions only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives, in any other case the application must be rejected.

6.3 **Diversity and Equality**

Implications verified by: **Samson DeAlyn**  
 Telephone and email: **01375 652472  
 sdealyn@thurrock.gov.uk**

The Council has a statutory duty under the Race Relations Act 2000 (Amendment), the Disability Discrimination Act 2005 and Sex Discrimination Act 1975 (Amendment) to promote equality of opportunity in the provision of services and employment. In delegating the power to decide minor variations to a senior officer, the Council should be mindful of the above statutory duties and ensure these duties are fulfilled in the course of decision making.

Comment [sj]: See Guideline 6.3

Comment [sj]: See Guideline 6.4

6.4 **Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental**

Section 17 has been considered at 5.1 above.

7. **CONCLUSION**

7.1 This new process is designed to ease the burden on both the Licensing Authority and licence holders by reducing beaurocracy cost and the time taken to process applications.

7.2 To enable this process to work as intended the power to grant or refuse minor variation applications should be delegated to officers.

7.3 It is recommended that the Head of Public Protection be given the delegated authority to determine these applications and that the Constitution be amended appropriately.

**BACKGROUND PAPERS USED IN PREPARING THIS REPORT:**

- The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009
- The Licensing Act 2003
- Thurrock Council's Statement of Licensing Policy.

**APPENDICES TO THIS REPORT:**

- Appendix A Legislative Reform Order

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**E-mail:** rgalliers@thurrock.gov.uk

Comment [sj]: This should inform the recommendations in the report

Comment [sj]: See Guideline 8. If any Papers are to be placed in the Members room that relate to this report, you should also list them here

Comment [sj]: List the Appendices referred to in the Report

Comment [sj]: Insert the full contact details of the author of the report