

BRIDGEND COUNTY BOROUGH COUNCIL

LICENSING COMMITTEE

13 AUGUST 2009

REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY SERVICES

AMENDMENTS TO THE LICENSING ACT 2003:

SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES:

REMOVAL OF THE REQUIREMENT FOR A DESIGNATED PREMISES SUPERVISOR AND PERSONAL LICENCE HOLDER AT COMMUNITY PREMISES

1.0 Purpose of Report.

1.1 To propose changes to the delegations of functions to officers in respect of two amendments to the Licensing Act 2003 relating to the application process. Firstly, 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.

2.0 Connection to Corporate Improvement Plan / Other Corporate Priority.

2.1 The duties of the Council under the Act are regulatory in nature and the Act sets out the licensing objectives which must be taken on board as part of any decision making process. The licensing objectives however support many of the overarching aims of the Corporate Improvement Plan and the Council's Corporate Priorities.

3.0 Background

3.1 The above statutory instruments came into force on 29 July 2009 and will simplify the application process for certain variations to premises licences and remove the requirement on some types of premises to specify a Designated Premises Supervisor to authorise the sale by retail of alcohol.

3.2 The Guidance issued by the Secretary of State Culture Media and Sport has been amended to reflect the changes. Section 4 of The Licensing Act 2003 states that the licensing authority must have regard to guidance issued by the Secretary of State when discharging its functions.

3.3 Any variation to a Premises Licence currently requires the applicant to submit an application, which requires Public Notice on site and in a newspaper, together with full notification to the responsible authorities. The procedure has now been simplified and small variations that will not impact adversely on the licensing objectives will now be subject to a simplified 'minor variations' process.

3.4 Under this process, the applicant is not required to advertise the variation in a newspaper or circulate 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) for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority. The cost of an application is £89.00.

- 3.5 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives.
- 3.6 Paragraph 8.36 of the Guidance recommends that decisions on minor variations should be delegated to licensing officers.
- 3.7 The principles of delegation adopted for all licensing applications have been based on ensuring the right to a hearing by a Licensing Sub-Committee should the responsible authorities or interested parties such as local residents submit representations about an application. All uncontested applications are currently delegated to officers.
- 3.8 Under the new procedure, 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. However, the Guidance states that there is no legal requirement to consult all responsible authorities on each application and that, in many cases the licensing authority may be able to make a decision without consultation.
- 3.9 The licensing authority must also consider any relevant representations received from interested parties received within the time limit. As stated in the 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.
- 3.10 Under the new reform, 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.
- 3.11 The two decisions possible are that:
 - the minor variation is granted; or,
 - the application is refused.
- 3.12 If the licensing authority fails to respond to the applicant within 15 working days 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.
- 3.13 Where an application is refused, it is still possible for it to be re-submitted through the full variation process under Section 34 of the Act. 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). If representations are received, the applicant, responsible authorities and interested parties will have the right to a hearing before a Sub-Committee.

- 3.14 Members are advised that 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. The new legislation does not, however, permit significant changes to be made to premises for example so as:
- To vary substantially the premises
 - To specify an individual as the premises supervisor
 - To add the sale by retail or supply of alcohol as an activity authorised by the licence
 - To authorise the sale by retail or supply of alcohol at any time between 11.00 pm and 7.00 am
 - To authorise an increase in the amount of time on any day during which alcohol may be sold by retail or supplied
- 3.15 It is the Government's 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 objective of the prevention of public nuisance. It is proposed that consultation is undertaken with the Council's Public Protection Department for advice on this type of application.
- 3.16 In line with the legislative reform to reduce burdens on applicants for premises licences, it is proposed that the licensing authority function to determine applications under the minor variation procedure is delegated to the Assistant Chief Executive Legal and Regulatory Services. It is proposed that the tests and criteria to be applied to applications should be those set out in the statutory Guidance and that the relevant responsible authorities are consulted on each application.
- 3.17 The second change to the Licensing Act 2003 will be effected by the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009.
- 3.18 This allows for the removal of the requirement for a designated premises supervisor and personal licence at community premises which offer the sale by retail of alcohol. The effect of the legislation is to place a lesser burden on this type of lower risk premises where they are authorised to sell alcohol. If an application is approved alcohol sales may be authorised by the management committee. While there may be issues relating to whether a premises is a community premises with a proper management committee, there should not be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place.
- 3.19 As the Chief Officer of Police is required to be consulted on such an application, and may object to the revised conditions being implemented, the right to a hearing under the Licensing Act 2003 is retained and existing principles of delegation will apply so that officers may deal with uncontested applications. As an additional safeguard, the legislation allows for interested parties and responsible authorities to apply for a review of a premises licence of this type by the licensing authority and for the requirement for a Designated Premises Supervisor to be re-imposed on the Licence.

4.0 Current situation / proposal.

- 4.1 It is proposed that the power to determine applications received in accordance with The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 is delegated to the Assistant Chief Executive Legal and Regulatory Services.
- 4.2 It is proposed that the power to determine applications received in accordance with the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls & c.) Order 2009 is delegated to the Assistant Chief Executive subject to the proviso that if representations are received, the case will be determined by a Licensing Sub-Committee.
- 4.3 It is proposed that the current Scheme of Delegation is amended in these terms.

5.0 Effect upon Policy Framework& Procedure Rules.

- 5.1 The report content has no direct effect upon the Policy Framework and Procedure Rules.

6.0 Legal Implications.

- 6.1 The proposals recommended within the report are necessary for the effective implementation of the Licensing Act 2003. Matters relating to the discharge of licensing authority functions are, by virtue of Section 7 of the Licensing Act 2003, referred to the Licensing Committee (excepting those relating to the statement of licensing policy). Section 10 of the Act allows for certain functions to be delegated to officers.

7.0 Financial Implications.

- 7.1 None. A statutory fee of £89 is payable on application.

8.0 Recommendation.

Committee is recommended to approve

- 8.1 That the functions of the Licensing Committee and the delegations to officers in relation to premises licences, be amended to reflect the changes set out in Table 1 below;
- 8.2 That the Assistant Chief Executive Legal and Regulatory Services submit a report to Council recommending amendments to the Council's Constitution and Schemes of Delegation to reflect the sub-delegation of functions.

Table 1

Matter	Sub-Committee to hear and Determine	Officers to determine
Applications under the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	n/a	Officer determination
The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	Where the Chief Officer of Police submits an objection	All other cases

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Date: 6 August 2009

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Background documents:

- Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 published by the Department for Culture Media and Sport
- 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.) Orders 2009.