

Minor variations - at a glance

A LACORS reminder for responsible authorities is available

Note: readers should refer to the Statutory s.182 DCMS Guidance on Minor Variations for more detail, especially regarding the different types of minor variation applications that can be made. The Guidance can be viewed via this link:

<http://www.culture.gov.uk/images/publications/LicensingGuidanceAmendedjul09.pdf>

The Minor Variations system will be in force from 27th July 2009.

What type of applications will be made under this process?

The Guidance envisages 4 main types of minor variation application:

- Minor changes to the structure or layout of a premises: see paras 8.43- 8.44
- Small adjustments to licensing hours: see paras 8.51-8.53
- Conditions: removal of out of date irrelevant or unenforceable conditions: see paras 8.54- 8.60
- Licensable activities: adding certain licensable activities, including live music: see paras 8.47-8.50.

Fees

The fee per application is £89. There are **no exemptions** to this fee (i.e. an otherwise exempt school still has to pay the £89 fee).

Annual fees remain unaffected and fall due as per the original grant.

The application procedure

Applications are made to the licensing authority on the **prescribed forms**. The application must be advertised on a white notice at the premises, and the notice must comply with the requirements set out in regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42 as amended). These require that the notice be A4 or larger, and contain basic details such as a brief description of the proposed variation (s); name of the applicant or club; address of premises; and date by which an interested party may make representations.

There is no requirement for the applicant to advertise the application in a local newspaper.

Note: applicants can volunteer conditions as part of the minor variations process, whether from their own risk assessment of the variation, or from informal discussions with the responsible authorities or the licensing authority. For more information see paragraphs 8.55 and 8.56 of the Guidance.

Hearings

There are **no hearings** under the minor variation process.

Role of responsible authorities

There is no requirement for applicants to notify responsible authorities of their application. Instead, responsible authorities are only involved at the request of the licensing officer. The Guidance suggests that licensing officers "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.” (8.37).

The Guidance envisages that “in many cases the licensing authority may be able to make a decision without consultation”, however.

Role of interested parties

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 that licensing authorities must take any representations into account in arriving at a decision. (8.38)

Delegation

NB: DCMS will issue a letter setting out the Government’s advice regarding delegation and minor variations. A hyperlink will be added here once the letter is provided.

The Government recommends that the LA delegates decision making on Minor Variation applications to licensing officers.

In practice this is likely to mean that if the LA receives applications under the Minor Variation process before decision-making has been delegated to officer level, it may be possible for officers to make the decision under many LAs current scheme of delegation regarding applications where there are no relevant representations. If representations are received in response to a minor variations applications in the absence of delegated powers to officers the decision would have to be made at committee level. Although this would entail committee members making the decision, a hearing is not required by the legislation.

Minor Variations Timescale

The timescale set out in the legislation is 15 working days. Day one is the “initial day”, i.e. the first working day after the day the licensing authority receives the application. The licensing authority must then process the application, and determine it within 15 working days of the initial day. If the authority fails to determine the application within 15 working days, the application is deemed refused, and the fee must be returned to the applicant. (8.40)

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. LAs may also wish to consider the application and consult relevant responsible authorities during this time. A determination cannot be made during the 10 working day period, leaving LAs with the remaining 5 working days to determine the application.

NB: If the application is rejected within the 15 days, the LA retains the fee in the usual way.

Determining minor variation applications

“The key test is whether the proposed variation could impact adversely on any of the four licensing objectives.” (8.42)

NB: Licensing officers have no power to impose conditions; only conditions volunteered by the applicant can be added to the licence under the minor variations procedure. The determination is therefore either to grant or to refuse an application.

Notice requirements following determined applications

Granted applications: the licensing authority must notify the applicant of any variation granted, together with the time that the variation will take effect. This will usually be as stipulated in the application, but if the applicant stipulates a date before the notice of determination is given, the licensing authority will specify a later time in the notice.

Refused applications: the licensing authority must give notice to the applicant that the application has been refused, together with the reasons for the refusal.

Applications that have been rejected under the minor variations process can then be the subject of a full variation application or of a revised minor variations application, and the minor variations refusal does not affect any subsequent variation application in respect of the same premises.

There is no right of appeal against the refusal of a minor variation application.

Licences and summaries need to be reissued on the grant of a minor variation applicant (s 56 LA03).

Recording minor variations

Applications under the minor variations procedure are likely to feature in future DCMS statistical bulletins so all applications and decisions should be recorded.

Publicity

We understand that DCMS are undertaking some general publicity on this new process and will also amend its guidance to interested parties and applicants. DCMS are also willing to attend and address conferences and events to publicise the minor variations process, so colleagues may wish to invite DCMS representatives to any relevant events organised this year.