

EXECUTIVE NOTE

THE LICENSING (MINOR VARIATIONS) (SCOTLAND) REGULATIONS 2011

SSI 2011/151

The above instrument was made in exercise of the powers conferred by paragraph 29(6)(d) and 146(2) of the Licensing (Scotland) Act 2005.

Policy Objectives

This regulation prescribes a number of situations where an application to vary a premises licence should be treated as a minor variation and therefore be granted automatically by the Licensing Board. The variation procedure is provided for by section 29 of the Licensing (Scotland) Act 2005 whereby premises licence holders may apply to the Licensing Board to vary their premises licence so as to change

- the licence conditions;
- operating plan;
- layout plan; or
- any other information contained or referred to in the licence.

The Board are obliged to grant applications for minor variations and section 29(6)(a) to (c) provides the following three descriptions of minor variations:

- A variation in the layout plan which does not conflict with the operating plan;
- A variation restricting the terms on which children or young persons are allowed entry;
- A variation of the information in the licence relating to the premises manager.

Section 29(6)(d) allows Ministers to prescribe forms of variations that are to be treated as minor variation in addition to those three examples.

The purpose of this regulation is to add the following descriptions of minor variations—

- any change in the name of the premises;
- any reduction in licensed hours;
- any increase in the minimum age at which children and young persons can access the premises, reductions in access time and restrictions in access to certain parts of the premises;
- any reduction in the capacity of the premises;
- a change to the operating plan whereby music exceeding 85 decibels, which is one of the triggers for the late night opening conditions, is no longer provided;
- a change to the operating plan to provide that more customers are likely to be seated than standing.

The aim is to further ensure consistency and give greater clarification of what can be processed as a minor variation. This will, in turn, reduce costs for the Board as they will no longer require to undertake the full consultation and hearing process required for a normal variation. It also reduces costs for the applicants as there is a substantially lower fee level for processing a minor variation.

Consultation

The Scottish Government have consulted all licensing boards in Scotland, the key licensed trade associations, the Law Society of Scotland, a number of licensing solicitors and the police

Regulatory Impact

A Business Regulatory Impact Assessment is attached

Financial Effects

This instrument has no financial effects on the Scottish Government, financial effects on other bodies are set out in the Business Regulatory Impact Assessment..

Justice Directorate
February 2011

Final Business and Regulatory Impact Assessment

Title of Proposal

The Licensing (Minor Variations) (Scotland) Regulations 2011

Purpose and intended effect

- **Background**

The Licensing (Scotland) Act 2005 created a prescribed list of 'minor variations' to a premises licence that could not be refused by a Licensing Board and for which a hearing could not be held. The fee for a minor variation is set at £20 as opposed to the £200 to £2000 required for a major variation.

The 2005 Act enables a variation to be considered "minor" where the variation:

- would alter the layout plan and not result in any inconsistency with the operating plan;
- relates to a restriction on the terms on which children or young persons are allowed entry to the premises;
- concerns the information contained in the licence relating to the premises manager; or
- is for the substitution of a new premises manager.

- **Objective**

The revised process expands the circumstances where a variation is considered minor and is designed to allow licensees to make small changes to their licences in a quicker and cheaper way.

The proposed variations to be treated as minor are:

- provides for a change in the name of the premises.
- provides for a reduction in licensed hours to be treated as a minor variation.
- provides for age restrictions for the access of children and young persons to the premises, reductions in access time and restrictions in access to certain parts of the premises to be treated as a minor variations.

- provides for a reduction in the capacity of the premises to be a minor variation.
- where music exceeding 85 decibels is no longer provided, which is one of the triggers for the Late Night opening conditions, the necessary variation can be treated as a minor variation.
- where a variation provides that more customers are likely to be seated than standing it will be a minor variation.
- **Rationale for Government intervention**
It supports effective government by streamlining the regulatory process and the wider Scottish Government's strategic objective of supporting Scotland's economy. It achieves this by reducing bureaucracy and unnecessary regulation of licensed premises by allowing minor changes to be made to the conditions of a licence without the same scrutiny required of more major amendments.

Consultation

Within Government

Local Government have been consulted via local licensing boards who have generally welcomed the approach of reducing their oversight of minor changes to the operations of licensed premises.

Public Consultation

The changes proposed will be of little interest to the public at large representing as they do, a reduction in scrutiny of minor changes. Members of the public will still be able to make representations to a Licensing board about any matter of concern to them. Significant changes such as an increase of hours will still be subject to full scrutiny. As such full public consultation was not deemed appropriate. The Police have been consulted given the need to assure that variations fall into the automatically approved 'minor' category are appropriate and do not give rise to circumstances where the Police would be concerned.

Business Consultation

Direct consultation with individual businesses was not carried out for the following reasons:

The Licensing (Scotland) Act 2005 only came fully into force on 1 September 2009; therefore few operators will have experience of the procedure for variations. Only the trade bodies and the some licensing legal specialists will have an overview of the system and they have been consulted. These are trade solicitors, the Law Society, Wine and Spirits Trade Association, Scottish Grocers Federation, Scottish Beer and Pub Association, Scottish Licensed

Trade Association and the Scottish Retail Consortium.

The minor nature of these changes and the positive effect on business would mean it was not proportional to carry out further face-to-face discussions.

Options

- **Sectors and groups affected**

The Licensed sector will be the group mainly affected though it will have some implications for the work of Licensing Boards and the Police.

- **Benefits**

Do nothing

There are no benefits to the status quo.

Changes proposed under the regulations

The changes proposed under the regulations will support businesses by freeing them from an excessively rigorous examination of minor changes to their operations such as reducing the hours they open for example.

The changes will also benefit Licensing Boards and the Police by freeing them from their role in examining these minor changes and allowing them to focus upon other, more significant proposals.

- **Costs**

Do nothing

This option would leave licensees continuing to operate under the existing system which subjects them to unnecessary cost and scrutiny before making minor changes to the way they operate their businesses.

Changes proposed under the regulations

The obvious danger of the regulations is that they would allow businesses to make changes under the minor variation procedure that should in fact have been subject to a fuller scrutiny and with the potential for the Police to object and for a Licensing Board to reject them. This risk has been managed by consulting with the Police and Boards to ensure that the changes considered as minor variations are appropriate.

Scottish Firms Impact Test

For the reasons detailed above in the consultation section there has been no

Scottish business consultation. Scottish businesses will benefit from the reduced regulatory burden.

- **Competition Assessment**

There are no significant competition implications.

The market for sale of alcohol is not distorted. There will be reduced costs but the reduction applies equally for any licensee who wishes to make a minor variation

- Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No

- Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers?

No

- Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in?

No

- Will the proposal reduce suppliers' incentives to compete vigorously? e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers?

No.

- **Test run of business forms**

There are no new business forms being introduced by this proposal.

Legal Aid Impact Test

It is not anticipated that there will be any costs to the legal aid fund.

Enforcement, sanctions and monitoring

There are no changes to the enforcement and monitoring regime. The regulation of licensed premises will remain the responsibility of Licensing Boards supported by licensing standards officers.

Implementation and delivery plan

The regulations are intended to have effect on 1 April 2010.

- **Post-implementation review**

We will monitor their effect over the next 12 months and make further changes if necessary.

Summary and recommendation

The changes planned in the regulations are recommended in order to assist licensed businesses by reducing oversight of minor changes to their operations.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact does not need to be assessed with the support of businesses in Scotland.

Kenny MacAskill
Cabinet Secretary for Justice