

**THE LEGISLATIVE REFORM (MINOR VARIATIONS TO PREMISES  
LICENCES AND CLUB PREMISES CERTIFICATES) ORDER 2009**

**EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR CULTURE, MEDIA  
AND SPORT**

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## **Introduction**

1. This explanatory document is laid before Parliament in accordance with section 14 (1) of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") together with the draft of the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 ("the Order").

## **The Duties of the Minister**

2. With regard to the duties imposed on the Secretary of State in relation to public consultations by section 13 of the 2006 Act, the Secretary of State for Culture, Media and Sport considered and approved both consultation documents before publication. After the periods of consultation, the Secretary of State considered in the light of the responses that the proposals should proceed with the amendments outlined in paragraphs 28 and 31-32.
3. Accordingly, the Secretary of State is laying before Parliament the documents required by section 14(1) of the 2006 Act. It is proposed to make the Order under the powers conferred by section 1 of the 2006 Act, and the Secretary of State is satisfied that the Order serves the purpose set out in section 1(2) of that Act and meets the conditions imposed by section 3(2).
4. For the reasons stated below, in particular at paragraph 22, the Secretary of State recommends the negative resolution procedure for this proposal.

## **The Licensing Act 2003**

5. The Licensing Act 2003 ("the 2003 Act") requires anyone carrying on one or more licensable activities as defined (see below) to have an appropriate form of authorisation under the Act. For activities other than temporary activities (dealt with in Part 5 of the Act), the appropriate form of authorisation is a premises licence or club premises certificate, which may be obtained by applying to the licensing authority and paying a set fee to cover the costs

associated with the application. The licence or certificate sets out the terms of the authorisation and includes a plan of the premises.

6. The licensable activities are:

- the sale by retail of alcohol
- the supply of alcohol by or on behalf of a club to, or to the order of a member of a club;
- the provision of regulated entertainment, and
- the provision of late night refreshment.

(In relation to clubs, the Act defines which licensable activities are also "qualifying club activities", for which clubs may be authorised (see section 1(2)).

7. The provision of regulated entertainment is defined in Schedule 1 of the Act as 'entertainment' or the provision of 'entertainment facilities'. Entertainment includes:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment;
- a performance of live music;
- any playing of recorded music;
- a performance of dance.

8. Late night refreshment is defined in Schedule 2 of the Act and can be summarised as the sale of hot food or drink to members of the public between the hours of 11pm and 5am for consumption on or off the premises.

#### **Variations to licences and club certificates**

9. Section 34 of the Licensing Act currently provides that the holder of a premises licence may apply to the relevant licensing authority for variation of the licence. A variation is required for any change to any aspect of the licence, including any feature shown on the plan of the premises. Section 84 of the Act makes comparable provision in relation to club premises certificates.

10. In order to apply for a variation, the licence or certificate holder must complete a prescribed variation application form and send it, together with

the prescribed fee, the original licence and the revised plan (if appropriate) to the licensing authority. They must also copy all documents to up to nine 'responsible authorities' (public bodies such as the police, fire and rescue authority, etc), advertise the application in the local paper or newsletter and place a notice with details of the application at or on the relevant premises.

11. The licensing authority must grant the application within 28 days unless it receives 'representations' from interested parties (local residents and businesses in the vicinity of the premises) or from any of the responsible authorities. Representations must relate to the four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm.

12. If representations are received, the licensing authority must hold a hearing to consider them (unless all parties agree this is unnecessary) and take any steps it considers necessary for the promotion of the licensing objectives, including adding to or modifying the conditions of the licence or certificate or rejecting all or part of the application. If the application is refused, the applicant may appeal to the local magistrates' court for the relevant petty sessions area.

13. The above requirements are essentially the same as those for a new licence and place similar administrative costs on applicants, local authorities and responsible authorities.

14. Although in most cases, the burden imposed by section 34 of the 2003 Act is justified by the potential impact on the licensing objectives, a significant number of applications to vary (just under 30%) are for minor changes which are unlikely to impact in any significant way on the licensing objectives. These might include, for example, the re-location of a bar, moving safety equipment to a more appropriate location or adding the performance of dance to a licence for a town square that already permits all other regulated entertainment.

15. The Government proposes to amend the 2003 Act to make provision for a new 'minor' variations process that will provide a quicker, less bureaucratic and cheaper route for the approval of small, low risk changes to licences and club certificates. This proposal was originally put forward in the Department for Culture, Media and Sport's Simplification Plan 2006.

#### **Details of the proposal**

16. Under the proposed minor variation process, licence and club certificate holders will still be required to apply to the licensing authority for the variation, but the process will differ from the full variation process outlined in paragraphs 7 - 122 in the following respects.

- **Applicants will not be able to apply for any variation relating to the sale or supply of alcohol unless it is to reduce the hours during which alcohol may be sold or supplied or to move (without increasing) the hours during which alcohol is sold or supplied between 7am and 11pm only.**
- They will not be required to advertise the application in the local newspaper or local circular or display a notice with details of the application on or outside the premises.
- They will not be required to copy the application to responsible authorities.
- Local residents and businesses in the vicinity of the premises will not have the right to make 'representations' to the licensing authority about the proposed minor variation or to discuss these views at a formal hearing.
- Licensing authorities will be required to copy the application to such of the responsible authorities as they consider appropriate to the case. This obligation will apply if the authority is in any doubt about the impact of the variation on the licensing objectives. The authority will be required to take into account any views expressed by the authorities they consult. There will be no formal hearing to consider these views, but they will have a bearing on (and may even be decisive of) the authority's view as to whether the changes proposed in the application amount to a "minor variation" of the licence or certificate.

- The licensing authority must inform the applicant of its decision to grant or reject the variation within 15 days or the application is treated as refused and they must return the fee.
- There will be no right of appeal. If the application is refused, the applicant may re-submit a revised application through the minor variations procedure or submit a full variation application.
- Where the applicant agrees, the licensing authority may treat an application and/or the accompanying fee as a fresh application and/or a fresh fee submitted to accompany it. In such cases the 15 working day period for determining the application will recommence. This element of the policy was included to ensure that there will be scope for flexibility in the way the applicant and the authority deal with the consequences of the authority's failure to comply with the 15 day deadline. The applicant's agreement will be required for any deemed resubmission of the application or the fee.
- Applicants will pay a flat rate fee to the licensing authority of £73.00 per application.

The Secretary of State considers that the addition of the sale of alcohol to a licence or the extension of the hours during which alcohol may be sold will always have implications for the licensing objectives and should therefore be excluded on the face of the Act from the minor variations process.

#### **Administrative cost savings.**

17. We estimate that the average administrative cost of applying for a variation through the current procedure is approximately £385, but can be as much as £950 if applicants need to have a revised plan of the premises drawn up professionally and/or seek legal advice. Drawing on the latest DCMS Statistical Bulletin, published on 8 November 2007, and discussions with key stakeholders, we estimate that in future years there will be approximately 20,000 variation applications per year across all licensing authorities of which just under 30% would fall into the category of 'minor' variation as defined in the Order. The approximate annual burden on these applicants is an estimated £2.1 million - £3.9 million per year. They must also pay a fee which is

based on the rateable value of the premises and averages £225 per premises.

18. Under the new minor variations process, applicants would benefit from a much simpler and quicker application process. We estimate that this would result in administrative cost savings to licence and club certificate holders of around £1.9 million - £2.5 million per year. Applicants will also benefit from a reduced, flat rate fee of £73.00 and a shorter timescale of 15 days within which licensing authorities must come to a decision on the variation.

19. There will be a small, new burden on licensing authorities who will be required to copy the application form to any relevant responsible authorities they consider appropriate (e.g. if there is any doubt about the impact of the variation on the licensing objectives). However, we anticipate that in most cases, the licensing authority will be able to reach a decision without seeking specialist advice. The anticipated costs will be small (£43,000 per year across 378 licensing authorities - approximately £114.00 per authority) and will be fully recoverable through the fee payable by the applicant to the licensing authority. Communities and Local Government has indicated that it is content that these costs do not constitute an unacceptable new burden on local authorities.

20. Full details of anticipated cost savings are provided in the Impact Assessment at Annex A.

#### **Consultation with Welsh Ministers**

21. The Licensing Act extends to England and Wales. Licensing matters are not at present devolved to the Welsh Assembly Government or the Assembly. However, the Welsh Assembly Government has been kept informed and consulted on these proposals.

#### **Parliamentary Resolution procedure**

22. The Secretary of State considers that this proposal is a small legislative change which delivers real reductions in unnecessary burdens imposed under the Act. Further, it is not highly controversial as it will have no adverse impact on the licensing objectives. This is secured by the strict definition of what counts as a "minor variation" (see the proposed new sections 41B(3) and 86B(3)). An

authority is required to reject an application if any of the changes proposed in the application could have any negative effect on the promotion of the licensing objectives. It is also supported by a wide range of licensing stakeholders, including the licensed trade and local authorities. The concerns expressed by a small number of residents and local authorities during the initial public consultation about the potential use of the new process to approve variations involving the sale of alcohol have been addressed by excluding these variations from the minor variations process on the face of the Act. The Secretary of State considers that other concerns, e.g. about the addition of other licensable activities to the licence, changes to licence conditions, etc. are adequately addressed through the requirement of licensing authorities to seek consultation of other relevant authorities where they deem it appropriate for any minor variation application and in the proposed statutory Guidance to licensing authorities at Annex B. He therefore recommends the **negative resolution** procedure for this proposal.

#### **Public Consultation**

23. The Secretary of State consulted on the policy options for this proposal from 31 November 2007 to 20 February 2008. A further short consultation on the draft Order, statutory Guidance to local authorities (under section 182 of the Act), proposed fee and application form was published on 4 August 2008 for one month (ending 1 September). There were 108 responses to the initial consultation and 83 responses to the second stage consultation. The consultation documents were distributed to various organisations that have an interest in the licensing process and a list of those who responded can be found at Annex C. Annexes D and E summarise the responses to the consultations and the Department's response to them.
24. The Department also appointed a sub group of its standing Licensing Advisory Group of licensing stakeholders to advise on the development of this proposal. The sub group met six times during 2007 and 2008. A list of members of the main Advisory Group and the sub group is at Annex F. DCMS officials met separately with the National Organisation of Residents Associations (NORA), the 'Open All Hours' group of residents groups (mainly from London, the

South-East and the Midlands) and the British Institute of Innkeeping.

### **Full consultation**

25. The Consultation Document published in November 2007 discussed three policy options as follows:

**Option 1:** Amend the Act to introduce a new process for minor variations, broadly defined as 'any variation that does not impact adversely on the promotion of the licensing objectives'. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities are required to consult such responsible authorities as they judge appropriate, depending on the individual circumstances of the variation.

**Option 2:** Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or, excluded from, a minor variations process. Licensing authorities required to consult responsible authorities as above.

**Option 3:** No change

26. The Secretary of State recommended Option 1 on the grounds that it would: devolve decision making to a local level in line with Government principles; deliver maximum cost savings; and retain necessary protection for residents and others who might be affected.

27. The majority of respondents agreed with this recommendation. However, a significant minority (35%), including all residents' associations and a few local authorities, preferred Options 2 or 3. Their view was that giving discretion to local authorities would lead to inconsistencies in interpretation and the risk that licensing officers might allow variations under the minor variations process that could affect residents and local businesses. There were particular concerns that applications for extended hours for the sale or supply of alcohol might be allowed through the new

process, with no opportunity for residents to object. Similar concerns were also expressed, but to a much lesser extent, about the addition of other licensable activities to a licence, changes to the layout of a premises and changes to licence conditions.

28. As stated previously, the Secretary of State considered that most of these concerns could be addressed through the statutory Guidance which provides detailed advice to local authorities and to which they 'must have regard' under section 4 of the Act. However, he recognised that appropriate weight should be given to the particular concerns expressed about alcohol-related variations and for this reason amended the proposal to exclude from the minor variations process on the face of the Act:

- the addition of the sale or supply of alcohol to a licence or club premises certificate;
- the sale or supply of alcohol at any time between 11pm and 7am;
- any increase in the amount of time on any day during which alcohol may be sold or supplied.

29. These exclusions were welcomed by stakeholders, particularly residents groups. In responses to the second stage of consultation (see below), the Chair of the Open All Hours group, for instance, said 'We welcome the statements...which in effect exclude from the minor variations process any application which would extend the sale or supply of alcohol'.

### **Second stage consultation**

30. In the second phase of consultation, the Secretary of State asked for views on the draft Order, draft statutory Guidance to licensing authorities, the proposed, flat rate fee of £73.00 and application form. He also sought views on one further policy issue which had been raised by the Licensing sub group following the first phase of consultation. This was whether any action should be taken if, for any reason, the licensing authority failed to respond to the applicant with a decision within the proposed, statutory ten day period. The Secretary of State initially recommended that no action should be taken on the grounds that most licensing authorities would respond within ten days and the options - deemed

consent to the proposal, deemed refusal, a letter from the authority explaining the reasons for delay and/or an extension of the time for response - were all unsatisfactory. However, if an authority failed to respond, no further fee should be chargeable.

31. Nearly 50% of respondents disagreed with this recommendation. In addition to the options noted above, respondents suggested a longer period of 15 - 20 days to give the local authority more time to respond; return of the fee; and deemed consent within 28 days (regardless of the statutory time limit). The Secretary of State recognises that one of the benefits of the new process is the shorter timescale for decisions and that applicants need to know promptly if their proposal has been rejected and whether they will need to submit a revised application or apply through the full variation process. The Secretary of State further recognises the practical difficulties of deemed consent, in respect of a licensing system which requires amendments to a licence to be made on the grant of consent to an application for variation. He has therefore amended the Order to extend the statutory time limit to 15 days (to give licensing authorities more time to consider applications), but also to require licensing authorities to return the fee to the applicant if a decision is not communicated to them within that timescale. In such cases, the application will be treated as refused. Discussions with stakeholders indicate that local authorities and the licensed trade accept this approach as an appropriate solution.
32. Nearly half of respondents proposed some changes to the draft statutory Guidance, with most seeking further clarification of how existing and new licence conditions would be dealt with under the new process. The Guidance has now been amended to address these concerns and local authority representatives have indicated that they are content with the revised version. Subject to Parliament's approval of this Order, the Guidance will be laid in both Houses for a period of 40 days for approval under the negative resolution procedure as required by section 182 of the 2003 Act.
33. Some respondents also submitted suggestions for improving and shortening the minor variations application form and these have been taken into account in the final version.

34. The majority of respondents (63%) were content with the proposed, flat rate fee of £73.00. The minority who disagreed were evenly divided between those who thought it should be higher and those who thought it should be lower. Fees and charges should normally be set to recover the full cost of the service. The Secretary of State considers that the elements of the minor variation process have been accurately identified and costed and the proposed fee is set at the right level.
35. Subject to Parliament's approval of this Order, the Secretary of State will lay statutory instruments to amend the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 and the Licensing Act 2003 (Fees) Regulations 2005 to introduce the new form and fee respectively.

Minority views: Newham and Westminster

36. In its response to the second stage consultation, Newham Council said that it was 'strongly opposed' to the proposal for a minor variations process, particularly the recommended delegation (in the Guidance) of decision-making to licensing officers and the removal of the requirement to advertise the application and the right of local residents and businesses to make representations. The Council is only prepared to accept small changes to the layout of a premises and changes to licence conditions, as set out in the proposed Guidance, through a minor variation process. Westminster Council shares these concerns, but to a lesser extent.
37. These are very much minority views of inner London authorities which are not shared by most licensing authorities or by their representative body, the Local Authorities Co-Ordinators of Regulatory Services (LACORs) which supports the proposal. The question of whether local residents and businesses should be made aware of minor variations and have the right to make representations on them was fully aired during the initial consultation, to which neither Council responded. The requirement to advertise a variation is one of the main costs involved in the variations procedure (£200-£400 for a newspaper advert, for example). The Department considers that this cost burden on applicants is only justified for full variations, i.e. those that may have an adverse impact on the promotion of the licensing objectives.

The Department also considers it appropriate for decisions on these small changes to licences to be taken at licensing officer level. It should be noted that this is only Guidance and a local authority may depart from it if they have good reasons to do so; the power to delegate the decisions in this process to licensing officers remains with the local authority.

### **Pre-conditions**

38. The 2006 Act specifies that any Order must satisfy certain preconditions. These are that the proposal: cannot be fulfilled by non-legislative means; is proportionate to the policy objective; provides a fair balance of public interest and the interest of those adversely affected; maintains necessary protections; does not affect rights and freedoms; and is not constitutionally significant. An analysis of the results of the Secretary of State's consideration of these preconditions is set out below.

### **Non-legislative solutions**

39. The requirements for licence and certificate holders to submit applications to vary their licences derive from primary legislation. Changes to these requirements cannot be delivered through secondary legislation alone without amendments to the primary legislation.
40. Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act. In addition, the police and other responsible authorities are not required to have regard to it.
41. The Secretary of State therefore considers that a minor variations process cannot be achieved through: changes to the Guidance; changes to the regulations made under section 182 of the Act; any voluntary agreements between central government, licensing authorities and the police. All respondents to the initial consultation agreed with this view.

## **Proportionality**

42. Premises regulated under the Act range from village and community halls, political and sports clubs, small shops, cinemas and concert halls to large retailers and pub chains. These businesses, organisations and clubs make an important contribution to the national and local economies and, in many cases, also contribute to cultural and community life by hosting live music, plays, cinema and other activities.
43. The current variations process places an unnecessary burden on licence and certificate holders who wish to make small, low risk changes to their licences or certificates and diverts money which could be used to expand and improve their businesses, promote 'grass-roots' sport in the case of sports clubs, or to provide a greater range of cultural activities and entertainment in the case of village and community halls.
44. The Secretary of State believes that the introduction of a minor variations process, limited to low risk, minor changes which will not impact adversely on the licensing objectives, represents a targeted and proportionate approach. This view was shared by 94% of respondents to the initial consultation.

## **Fair balance**

45. The public interest in this case lies in ensuring that licensed premises and clubs - particularly small and medium sized enterprises and voluntary organisations - are economically viable and can continue to provide a wide range of services to the community as explained in paragraph 42 above.
46. However, there is also a public interest in maintaining the protections afforded to people living in the vicinity of licensed premises who may be affected by the licensable activities. This extends to the protection of the wider public who may be directly affected by alcohol related crime and disorder and public nuisance, the vulnerable, e.g. children; customers who may be at risk from inadequate or non-existent public safety measures in licensed premises; and society as a whole which is damaged by crime and disorder and public nuisance.

47. The Secretary of State considers that the proposed minor variations process includes safeguards, such as the definition of what counts as a "minor variation" (see paragraph 22 above), the exclusions relating to alcohol and the statutory Guidance, to ensure that only variations that will not impact adversely on the licensing objectives will be approved under the new procedure. Furthermore, the decision to approve minor variation applications rests with local authorities who are obliged to consult relevant other authorities (such as the police) where they consider it appropriate, e.g. where there is any risk of an adverse impact on the licensing objectives (which include the prevention of crime and disorder - see paragraph 9 above). The proposals are therefore considered to address the interests of those potentially adversely affected by the proposals and to achieve a fair balance between such people and the identified public interest. This view was supported by 81% of respondents to the initial consultation.
48. Furthermore the proposals do not amend or remove any of the measures and protections offered under the Act, or under other legislation such as the Noise Act 1996, to deal with unforeseen problems which arise at a premises at a later stage following grant or variation of a licence or certificate. The Act continues to provide a mechanism for all interested parties and responsible authorities to call for a review of a licence at any time, in addition to the serious sanctions for breach of licence or certificate conditions (see section 136 of the Act) and the powers of the police in relation to the closure of premises (see Part 8 of the Act).

### **Necessary protection**

49. The Secretary of State considers that no necessary protections will be removed by the introduction of a minor variations process for the reasons outlined above, in particular at paragraph 46. A majority (65%) of respondents to the initial consultation agreed with this analysis. Those who disagreed were concerned about the possible inclusion of alcohol related variations and/or the addition of other licensable activities. As discussed in paragraph 28, the Secretary of State considers that these concerns have been adequately addressed by the exclusion of all alcohol related variations from the minor variations process (apart from reductions in hours or changes of hours between 7am and 11pm with no overall

increase on any day) and by clear and detailed statutory Guidance.

### **Rights and freedoms**

50. The changes proposed will not prevent anyone from exercising an existing right or freedom that they might reasonably expect to continue to exercise. At present, an interested party or responsible authority is entitled to make "relevant representations" in relation to any application to vary a licence or certificate. In order to qualify as "relevant", such representations must be about the likely effect on the licensing objectives of the proposed changes: see sections 35(5) and 85(5) of the Act. By definition, if there is any possibility that the changes proposed in a minor variation application could impact adversely on the licensing objectives the authority will be obliged to reject the application. Therefore, the right of an interested party or responsible authority to make representations in relation to such an application is not, in the Secretary of State's view, one which they could reasonably expect to continue to exercise.

### **Constitutional Significance**

51. This proposal is not constitutionally significant.

### **Related Orders**

52. On 10th November the Department laid an Order before the Committees which proposes to amend the 2003 Act to remove the requirement for a Designated Premises Supervisor ("DPS") and personal licence for community halls in certain circumstances (the "Community Premises Order"). The Secretary of State considers that, as the changes under the Community Premises Order relate to the sale of alcohol, they should not be considered as minor variations to any premises licence. Section 86A of the draft Order therefore excludes these variations from the minor variation process. The inclusion of this provision in the draft Order is contingent upon the Community Premises Order coming into force.

### **Compatibility with the European Convention on Human Rights**

53. When developing the proposals for the draft Order, Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) of the Human Rights Act 1998 ("the Convention rights") were considered. The lack of appeal and lack of a hearing to consider representations in respect of the minor variations application process was considered in respect of the Convention rights of an applicant, and of an interested party as defined in sections 13(3) and 69(3) of the Act.
54. As far as the rights of applicants are concerned it is important to note that the full variation process under the Act continues to exist in parallel with the minor variations process. Any application for a minor variation may be made through the full variation procedure if the applicant so elects. This procedure provides for a hearing for a licensing authority to hear and consider all representations in respect of an application prior to determination and a mechanism for appeal for an applicant following determination in a way which is compatible with the Convention rights. The ability of the applicant to choose whether or not to use the full variation process under the Act provides opportunity for a hearing and for an appeal in respect of an application and therefore provides for the exercise of an applicant's Convention rights. All the minor variations process does is to create a relatively quick, simple and cheap alternative for applicants to pursue if the changes sought to their licence or certificate fall within a defined category of variations which could not have any adverse effect on the licensing objectives. It does not in any way curtail their Convention rights.
55. So far as interested parties are concerned, it might be suggested that the Order will bring about a curtailment of their Convention rights in so far as their property, privacy, home or family life could be affected by changes introduced through the minor variations process and/or that their right to a fair trial under Article 6 is being curtailed in relation to such changes. However, the Secretary of State is of the view that the nature of "minor variations" has been sufficiently defined in the Order so that there cannot, by definition, be any curtailment of such rights without the requirement for the authority to reject the application as not meeting the criteria expressed in the proposed new sections 41B(3) and 86B(3). The scope of "relevant representations" under

sections 35(5) and 85(5) of the Act is linked to the licensing objectives. These objectives are to be interpreted broadly in cases affecting private rights (see, for example, paragraph 2.33 of the current statutory guidance issued under s182 of the Act (28 June 2007) which deals with public nuisance). But the scope of "minor variations" is also linked to those objectives, and any possible adverse effect upon them will require rejection of the application. It follows, in the Secretary of State's view that the minor variations process cannot, by definition, be used to approve changes to licences or certificates that would have an adverse impact on the Convention rights of interested parties. If there is any possibility of such an impact, the variations must be sought through the full variations process.

**Compatibility with Obligations arising from membership of the European Union**

56. The draft Order is compatible with obligations arising from membership of the European Union. The Licensing Act 2003 is currently compatible with those obligations, and the changes to be introduced by the Order will not affect this; they will merely create a simplified procedure for changes to authorisations granted under the Act.

## Annex A: Minor Variations - Impact Assessment

Summary: Intervention & Options		
<b>Department /Agency:</b> Department for Culture, Media and Sport	<b>Title:</b> Impact Assessment of the proposal to introduce a simplified process for minor variations to licences	
<b>Stage:</b> Consultation	<b>Version:</b> 1.2	<b>Date:</b> 04/08/2008
<b>Related Publications:</b> Licensing Act 2003, Consultation paper on the proposal to introduce a simplified process for minor variations to licences under the Licensing Act 2003		
<b>Available to view or download at:</b> <a href="http://www.culture.gov.uk">http://www.culture.gov.uk</a>		
<b>Contact for enquiries:</b> Amanda Stevens		<b>Telephone:</b> 020 7211 6322

### What is the problem under consideration? Why is government intervention necessary?

A licensing system is required to regulate certain 'licensable' activities, including the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment, so that the risks to the four licensing objectives (prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm) are minimised.

Under the current system, a significant proportion of small changes to licences could be expected to have little or no impact on the licensing objectives. However, licence holders are currently required to go through the full variation process, with the ensuing costs and administrative burden, when the risks to the licensing objectives are minimal and interested parties and responsible authorities have little or no interest in them. This means that there is an imbalance between compliance costs and the benefits in terms of risk reduction. Government intervention is needed to correct this imbalance by reducing compliance costs for small, low risk changes to licences.

### What are the policy objectives and the intended effects?

The policy objective is to promote the four licensing objectives at the lowest administrative cost. The intended effects are:

- a significant reduction in the current administrative burden on licence holders
- an increase in the number of applicants submitting small changes to licences to the licensing authority. This should ensure that

licensing (and other) authorities have up to date records of premises to inform their enforcement strategies.

**What policy options have been considered? Please justify any preferred option.**

The Government consulted on the following options from 31 November 2007 to 20 February 2008:

Option 1: Define a 'minor variation' as any change to a licence that will impact on the four licensing objectives. Give licensing authorities complete discretion within this broad definition, to decide what is or is not a minor variation, subject to statutory Guidance and consultation with responsible authorities (the police, etc) if necessary. Government's recommended option

Option 2: Restrict or remove licensing authority discretion by specifying what is, and/or is not, a minor variation on the face of the Act. Consult responsible authorities as necessary.

Option 3: No change

A majority of respondents to the consultation agreed with the Government's recommended option, but a minority preferred Option 2 or 3 due to concerns that applicants would use the minor variation process to make changes that would adversely impact on residents and others in the vicinity. There were particular concerns about the possibility of varying a licence to add the sale or supply of alcohol or to extend hours during which alcohol could be sold or supplied. The Government has taken account of these concerns in the following proposal which forms the basis for the Legislative Reform Order.

**Proposal: To amend the Licensing Act 2003 to introduce a new process for 'minor variations to licences or club premises certificates. 'Minor variation' defined as any change to a licence that could not impact adversely on the four licensing objectives, with the following exclusions:**

- the addition of the sale or supply of alcohol to a licence;
- the sale or supply of alcohol at any time between 11pm and 7am;
- and any increase in the amount of time on any day during which alcohol may be sold or supplied

With these exceptions, licensing authorities will have discretion within this broad definition to decide whether a variation is minor or subject to consultation with relevant responsible authorities and having regard to the statutory Guidance.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Winter 2011, three years after implementation.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Summary: Analysis & Evidence

Policy

Description: As above

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Cost (excluding one-off)</b>		
	£0		<b>Total Cost (PV)</b> £0
Other <b>key non-monetised costs</b> by 'main affected groups': The proposal will require licensing authorities to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation. However, we anticipate that licensing authorities should need to consult one or perhaps two responsible authorities at most, and in some cases they will be able to come to a decision without seeking external advice. Any costs involved would therefore be small and would be recoverable through a fee payable by the applicant to the licensing authority.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups': Potential Annual Savings to all licence and certificate holders of £1.9m-£2.5m per year.
	<b>One-off</b>	<b>Yrs</b>	
	£0		
<b>Average Annual Benefit (excluding one-off)</b>			

<b>£2.2m (£1.9m-£2.50m)</b>	<b>Total Benefit (PV)</b>	<b>£18.3m (15.8m-</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Responsible authorities are currently consulted on all low risk, 'minor' variations. Under these proposals they would only be consulted on a small number of borderline minor variations, freeing resource for other priorities.		

**Key Assumptions/Sensitivities/Risks:** Estimates for numbers of variations that would fall into a minor variations process, costs and the proportion of variations that involve layout changes are based on information provided by stakeholders.

<b>Price Base Year</b> 2007	<b>Time Period Years</b> 10	<b>Net Benefit Range (NPV)</b> <b>£15.8m-£20.8m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£18.3m</b>
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What is the geographic coverage of the policy/option?		England and		
On what date will the policy be implemented?		Winter 08/		
Which organisation(s) will enforce the policy?		Licensing		
What is the total annual cost of enforcement for these organisations?		£ 0 (fees cover)		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2007 Prices)		(Increase - Decrease)		
Increase of	Decrease of	<b>Net Impact</b>		

Evidence Base (for summary sheets)

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

## The legislative burden

Section 34 of the Licensing Act 2003 provides that the holder of a premises licence may apply to the relevant licensing authority for variation of the licence. A variation is required for any change to the licence including changes to any feature shown on the plan of the premises.

The only exception is a variation to the licence to specify an individual as premises supervisor which is subject to a simplified, notification process under section 37 of the Act.

## **The Government's proposal**

The Government proposes that the 2003 Act is amended to make provision for a new 'minor' variations process. This would allow applicants to make small alterations to their licences for a minimal fee and without having to advertise the variation or copy it to all responsible authorities.

This proposal was put forward as part of the DCMS Simplification Plan published in 2007.

## **Who is affected by the burden?**

On 8 November 2007 the DCMS Statistical Bulletin "Alcohol, Entertainment and Late Night Refreshment Licensing" was published. This includes figures for the numbers of applications to vary premises licences and club premises certificates in England and Wales during the period 1 April 2006 to 31 March 2007. Based on responses from 82% of licensing authorities there were 10,120 variation applications, which, if extrapolated to include the remaining 18% of authorities that did not provide responses, would give a total of approximately 12,000.

These figures relate to a period soon after the Act came into force, so it follows that premises and clubs would be less likely to wish to vary the terms of their authorisations. This also explains why the statistics show a relatively high number of applications for new licences and certificates, 14,960 new applications based on responses from 82% of licensing authorities.

Extrapolated to the 18% of authorities that did not respond, this gives a total of approximately 18000 applications.

Following discussions with stakeholder groups and a focus group of ten licensing authorities, we know that many premises and clubs chose to apply for new licences and certificates instead of making applications to vary. This should not happen in future years because the revised statutory Guidance<sup>1</sup> issued in June 2007 now makes it clear that changes to existing licences and club certificates should be made through the variation process. Assuming around 20% of the 18000 applications (3600) for new licences and club certificates should have been variation applications, this gives us a revised total of 15600 variation applications per year.

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<sup>1</sup> Guidance issued under section 182 of the Licensing Act 2003 [add link]

We can also assume a further increase in variation applications as a consequence of introducing the minor variations process. For instance, we are aware, from enforcement action by licensing authorities, that some licence holders have made changes to their licences without applying for a variation, perhaps deterred by the cost of the process. These licence holders are more likely to apply to vary under the simplified and cheaper minor variations process. Similarly, licence holders who may have previously applied for Temporary Event Notices as a cheaper alternative to changing their licences, will be more likely to apply for a minor variation. We estimate that this should result in an increase of around 4000-5000 variation applications per year.

We therefore estimate that in future years, there will be approximately **20,000 variation applications** per year across all licensing authorities.

To calculate the current burden we would then need to establish how many variation applications might fall within the broad outline of a minor variation as defined in the Government's proposal below:

### **Government proposal**

**To amend the Licensing Act 2003 to introduce a new process for 'minor variations to licences or club premises certificates. 'Minor variation' defined as any change to a licence that could impact adversely on the four licensing objectives, with the following exclusions:**

- the addition of the sale or supply of alcohol to a licence;
- the sale or supply of alcohol at any time between 11pm and 7am;
- and any increase in the amount of time on any day during which alcohol may be sold or supplied.

Again, reliable estimates are not available and there is the further complication that many premises are simply choosing not to make variation applications for small changes due to the disproportionate costs involved. However, from discussions with stakeholder groups and licensing authorities we estimated in the partial impact assessment that accompanied the first round of

consultation that approximately **30% of variations (6000)** would be likely to be captured by a minor variations process if licensing authorities were given full discretion. We estimate that the proposed exclusions set out above would reduce the total number of variations likely to be captured by the new process by 10% to **5400**.

This figure does not translate directly into numbers of businesses or clubs affected by the burden, because some premises may submit several applications to vary (e.g. if they are carrying out a major refit of a store). Indications from stakeholders are that such multiple applications would account for around 5% of current 'minor' variations. If the total was reduced by 5% to take account of multiple applications, it would still mean that 5130 **premises per year** are affected by the burden.

The range of affected groups includes:

- pubs, bars, nightclubs, hotels, guesthouses and other premises licensed for the sale of alcohol on the premises;
- supermarkets, convenience stores and other premises licensed for the sale of alcohol off the premises;
- theatres, cinemas, live music venues other providers of regulated entertainment;
- takeaways, restaurants, cafes and other premises providing late night refreshments;
- voluntary bodies, such as charities, schools, village and community halls; and
- private members' clubs, such as sports, working mens', and political clubs.

## **The cost burden**

Applicants wishing to vary a licence or certificate (with the exception of a variation to specify a premises supervisor) must:

- complete and send an application form with a copy of the licence or certificate, the original plan (and amended plan, if appropriate) to the relevant licensing authority (£15-£80<sup>2</sup>)
- pay a fee (£100-£1905, depending on the rateable value of the premises);

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<sup>2</sup> Based on 1-5 hours of management time at an hourly cost of £16.23 (estimated from discussions with stakeholders).

- copy all documents to up to nine responsible authorities (£20-£40);
- advertise the proposed change in a local newspaper/circular (£200-£400);
- display a brief summary of the application on an A4 size notice immediately on or outside the premises (£5-£10, although this would increase for larger premises required to display multiple notices).

The average cost of a variation (including fees, which are charged on the same basis as for a full licence application and average approximately £225 per premises) is estimated to be approximately **£610**. The average cost of a variation excluding fees is approximately **£385**.

However, the following additional costs may apply to some variations:

- supplying a revised plan of the premises (where applying for changes to layout) - £25-£500 (e.g. if the plan has to be professionally drawn)
- obtaining professional legal help - £100-£500 (although in a small number of cases, legal fees may be as high as £1500).

If these costs are added, the average cost of a variation could rise to £950 (excluding fees) or £1170 (including fees).

The range of possible costs for a variation (excluding fees) is therefore **£385 - £950**.

Based on approximately 5400 variation applications a year that are likely to be captured by a minor variations process, at a basic administrative cost of £385 per application, this would result in an approximate annual burden of **£2.1m**. Please note that all annual burdens in this Impact Assessment have been rounded to the nearest £0.1m.

Revised plans are only required for variations involving changes to layout. Stakeholders estimate that approximately 70% of the 5400 variations likely to be classed as 'minor' under the new process (3780) fall into this category and therefore incur these additional costs. At an average cost of £263 for a revised plan, this results in an annual burden of approximately **£1.0m**.

Similarly, not all applicants will seek legal help to complete a variation application. Discussions with stakeholders lead us to estimate that approximately half (2700) of all 'minor' variations incur legal fees at an average cost of £300 per application, resulting in an additional annual burden on these applicants of **£0.8m**.

The range of the annual cost burden for variations (excluding fees), but including the cost of revised plans and legal fees as above for some applicants, is therefore **£2.1m-£3.9m<sup>3</sup>**.

## **Cost savings of a minor variations process**

### Administrative costs

Under the Government's proposal for a minor variations process as set out above there would be full cost savings in relation to:

- copying all documents to up to nine responsible authorities (£20 - £40);
- advertising the proposed change in a local newspaper/circular (£200-£400); and
- displaying a brief summary of the application on an A4 size notice immediately on or outside the premises (£5-£10).
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At an average of £338 per application, excluding fees, across all 5400 minor variations this would deliver an annual cost saving of **£1.8m**.

Applicants would still have to complete an application form and send it to the relevant licensing authority, with a copy of the licence or certificate, the original plan (and amended plan, if appropriate). However, as the application form will be shorter and simpler, this is likely to be a less time consuming process than for a full variation. If we assume an average reduction in management time required to complete the process of 0-3 hours per application at an estimated cost of £16.23 per hour the average cost saving would be £24. Since this average cost saving will apply across all 5400 variations the approximate annual cost saving will be **£0.1m**.

This means that for the main administrative elements that relate to all applications, the approximate total annual cost savings would be **£2.0m<sup>4</sup>**.

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<sup>3</sup> Figures may not sum to the total due to rounding.

<sup>4</sup> Figures may not sum to the total due to rounding.

### Legal costs

It is possible that an applicant who seeks legal help to apply for a relatively simple variation would still choose to do so for a minor variation application, even with a simpler form, thereby reducing the potential savings. If we estimate that about half of the 2700 minor variations (1350) that currently involve legal fees would no longer do so, that would result in a cost saving of £300/application and a total cost saving of **£0.4m.**

The remaining 1350 minor variations would still incur legal costs. However, the scale of any legal fees will reflect the complexity of the application process and as such the more straightforward minor variation system should reduce costs. We estimate that legal costs for minor variations would be in the range £100-£300, with an average of £200, meaning an average cost saving per application involving legal help of £100, and an approximate annual cost saving of **£0.1m.**

The total annual cost savings for legal work would therefore be **£0.5m.**

This gives a range for potential annual cost savings of **£1.9m-£2.5m.**

**Applicants may also benefit from the shorter timescale of 15 days required to gain approval for a minor variation, but this would depend on the nature of the variation and is impossible to quantify.**

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	Yes

## Annexes

### Department for Culture, Media and Sport: Equality Impact Assessment - Initial Screening

Section	Notes
<p>1. Name of the function/policy to be assessed:</p> <p><b>Proposed Legislative Reform Order to make provision for a new 'minor' variations process to allow applicants to make small alterations to licences and certificates under the Licensing Act 2003 through a low cost and streamlined process.</b></p>	
<p>1. What is the aim, objective or purpose of the policy?</p> <p><b>The policy objective is to amend the Licensing Act 2003 to introduce a simplified, fast track process for making small, low risk changes to licences.</b></p> <p><b>The intended effects are a significant reduction in the current administrative burden on licence holders, and an increase in the number of applicants submitting small changes to licences to the licensing authority. This should ensure that licensing (and other) authorities have up to date records of premises to inform their enforcement strategies.</b></p>	
<p>3. What are the intended outcomes?</p> <p><b>An amendment to the Licensing Act providing a simplified and lower cost mechanism for making small changes to premises licences and club premises certificates.</b></p> <p><b>A revision to the statutory Guidance to licensing authorities to reflect this new regulatory process.</b></p>	<p><i>Consider:</i></p> <ul style="list-style-type: none"> <li>• <i>How will you monitor progress towards these outcomes?</i></li> <li>• <i>Do the outcomes support or hinder other policies, values or objectives within the Department?</i></li> <li>• <i>If they hinder other work is this justifiable?</i></li> </ul>
<p>4. Who are the key stakeholders?</p> <p><b>Those who represent premises licence holders (including pubs, nightclubs, hotels, supermarkets, convenience stores, theatres, cinemas, live music venues, takeaways, restaurants, and village halls) and club premises certificate holders (including</b></p>	<ul style="list-style-type: none"> <li>• <i>Who are the groups/individuals likely to be affected by the function or policy?</i></li> <li>• <i>Who else might have a significant</i></li> </ul>

<p>sports, working men's, and political clubs), the licensing authorities as administrators of the regime, those involved in enforcement activity such as the police and other responsible authorities, and others with interest in the impact of the proposals on the licensing objectives such as residents.</p>	<p>interest in the implementation of this policy?</p> <ul style="list-style-type: none"> <li>• Who else might have knowledge of the impact or potential impact of the policy or function?</li> </ul>
<p>5. Is the aim of the policy or any of its intended outcomes designed specifically to meet the Public Duties, for example to:</p> <ul style="list-style-type: none"> <li>➤ Eliminate discrimination?</li> <li>➤ Promote equality of opportunity?</li> <li>➤ Promote good relations between different groups?</li> </ul> <p><b>No</b></p> <p>[Most functions, policies and practices will not be designed <u>specifically</u> to meet the Public Duties. You need only answer 'yes' if the <u>specific intent</u> of the function, policy or practice is to meet the public duties. Otherwise, move on to section 6]</p>	<ul style="list-style-type: none"> <li>• For example, a policy that has the aim of preventing harassment and bullying</li> <li>• If the answer is <b>YES</b> to any of the questions, then you are required to proceed to a full impact assessment. You should turn to section 13, though please note that sections 7-12 will help you to conduct a full assessment</li> </ul>
<p>6. Does the function or policy involve or have consequences for members of the public or staff employed by the Department?</p> <p><b>Yes</b></p>	<ul style="list-style-type: none"> <li>• If the answer is <b>YES</b> proceed to section 7</li> <li>• If the answer is <b>NO</b> list the evidence or other justification opposite or on an attached sheet that identifies why the function or policy has <u>no</u> consequences for members of the public or for staff employed by the Department</li> <li>• If the evidence that you have indicates that there is <u>no</u> impact or likely impact you do not need to conduct an impact</li> </ul>

	<p>assessment <u>but</u> you do need to monitor the implementation of the policy over time to ensure that there continues to be no impact on people. At a minimum this should be every three years</p> <ul style="list-style-type: none"> <li>• If you are sure the answer is <b>NO</b>, proceed to sections 13 and 14</li> </ul>
<p>7. Is there any evidence that tells you how the function or policy is working or is intended to work for the intended stakeholders?</p> <p><b>Yes</b></p> <p>Feedback from a range of stakeholders suggests that there is currently an unnecessary burden on those wishing to make small changes to their premises licence or club premises certificate, which do not impact in any way on the licensing objectives. The proposals are designed to reduce the burdens involved in making such application whilst still retaining the licensing objectives as the key protection built into the system.</p>	<ul style="list-style-type: none"> <li>• If you have <u>no</u> evidence available, then <b>you will not be able to assess if the policy is relevant to equality</b></li> <li>• You will need to gather evidence about the effects of the policy on stakeholders. (Please refer to section 2 of the guidance notes on gathering evidence)</li> <li>• You should also consider consulting with stakeholder groups and involving disabled people at this stage (Please refer to section 5 on consulting and involving)</li> <li>• When you have gathered evidence of the effects of the policy on the intended stakeholders, you can then proceed with the initial screening</li> </ul>

	<ul style="list-style-type: none"> <li>You should ensure that the actions necessary to collect the evidence are identified in an action plan</li> </ul>
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<p>1. From the available evidence, is there any reason to believe that people are affected differently or are likely to be affected differently according to any of the listed equality strands, for example, because they have different needs or priorities?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 20%;">Yes</th> <th style="width: 20%;">No</th> <th style="width: 20%;">Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> <tr> <td>Religion or Belief</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that the proposed regulatory change is likely to affect any of the above equality strands any differently.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion or Belief		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 9-12 will help you to conduct a full assessment</li> <li>If the answer is <b>No</b> and the evidence supports this, proceed to section 9</li> <li>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</li> </ul>
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Sexual Orientation		X																											

<p>2. Is there any evidence that the function or policy in any way discriminates or might discriminate unlawfully, directly or indirectly against people from any of the listed strands, for example, in terms of access to a service, or the ability to take advantage of an opportunity?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 20%;">Yes</th> <th style="width: 20%;">No</th> <th style="width: 20%;">Not Known</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Yes	No	Not Known					<ul style="list-style-type: none"> <li>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note</li> </ul>
	Yes	No	Not Known						

Age		X	
Disability		X	
Gender		X	
Race		X	
Religion or Belief		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**None of the feedback received from stakeholders indicates that the proposed regulatory change will discriminate against people in the listed strands.**

*that sections 10-12 will help you to conduct a full assessment*

- If the answer is **No** and the evidence supports this, proceed to section 10*
- If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above*

3. Is there any evidence that people from the groups covered by the listed strands have or may have different expectations of the function or policy in questions?

	Yes	No	Not Known
Age		X	
Disability		X	
Gender		X	
Race		X	
Religion or Belief		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**None of the feedback received from stakeholders indicates that any of the above groups will have different expectations of the proposed regulatory change.**

- If the answer to any of these questions is **Yes** for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will help you to conduct a full assessment*
- If the answer is **No** and the evidence supports this, proceed to section 11*
- If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do*

	<i>this. Refer back to section 7 above</i>
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<p>4. Is there any evidence that the function or policy affects or might affect relations between groups covered by the listed strands, for example is it, or might it, be seen as favouring a particular group or denying opportunities to another?</p> <table border="1" data-bbox="240 607 1118 1126"> <thead> <tr> <th></th> <th>Yes</th> <th>No</th> <th>Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion or Belief</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that the proposed regulatory change will favour a particular group or deny opportunities to another.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion or Belief		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li>• <i>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 12 will help you to conduct a full assessment</i></li> <li>• <i>If the answer is <b>No</b> and the evidence supports this, proceed to section 12</i></li> <li>• <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
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<p>5. Have previous consultations with relevant stakeholder groups or individuals indicated that policies <u>of this type</u> create exclusion or hold specific challenges for any of the listed groups?</p> <table border="1" data-bbox="240 1666 1118 2042"> <thead> <tr> <th></th> <th>Yes</th> <th>No</th> <th>Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion or Belief</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion or Belief		X		<ul style="list-style-type: none"> <li>• <i>If the answer to any of these questions is <b>Yes</b> for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13</i></li> <li>• <i>If the answer is <b>No</b> and the evidence supports this, proceed to section 13</i></li> <li>• <i>If your evidence is</i></li> </ul>				
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or Belief				<i>not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i>
Sexual Orientation		X		
<p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>None of the feedback received from stakeholders indicates that this policy will create exclusions or hold specific challenges for any of the listed groups.</b></p>				

<p>13. Is a full impact assessment required?  <b>No</b>  <b>We do not believe that the proposed regulatory change will affect any of the groups under the listed strands in a different way.</b></p>	<ul style="list-style-type: none"> <li>• If the answer is <b>NO</b> please use the space opposite to summarise why and attach any further supporting evidence</li> <li>• If the answer is <b>YES</b> you will need to arrange to carry out a full impact assessment</li> <li>• Please note that the information that you have already identified in this initial screening will be valuable to you in carrying out the full impact assessment</li> </ul>
<p>14. If a full impact assessment is not required, please indicate the plans to monitor the implementation of this policy over the next three years.</p> <p><b>We will check with key stakeholders whether the statement in section 13 is still correct 12 months after the regulatory change (subject to Parliament) is enacted.</b></p>	
<p>15. Please return a copy of this form to:</p>	
<p>Name: <b>Amanda Stevens</b></p>	
<p>Unit/Directorate: Sport and Leisure,  Department for Culture, Media and Sport</p>	

## **Competition Assessment**

We do not believe that the proposed policy is likely to raise any competition concerns. It will be for a premises or club to decide whether to apply for a minor variation and there would be no restriction to a particular type of premises or club, so to that extent the proposals apply equally to all premises. Therefore, it will not directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

## **Small firms impact test**

Since these proposals will impact equally on all premises, merely altering the mechanism by which a minor variation is made, we do not believe there is likely to be a significant impact on small businesses. Where these proposals affect small businesses, the impact will be to reduce burden and allowing greater flexibility in business operation. The stakeholder group set up to advise us on these proposals includes a wide range of bodies representing small businesses, including the Federation of Small Businesses, Association of Convenience Stores, Cinema Exhibitors Association, British Retail Consortium, Business in Sport and Leisure, British Beer and Pub Association, Musicians Union, Bar Entertainment and Dance Association, and Committee of Registered Clubs Associations. None of these groups have advised us of any adverse impact of the proposals on small businesses.

## **Rural Proofing**

Action with Communities in Rural England (ACRE) is a member of our stakeholder group and has not raised any concerns about the impact of these proposals on rural communities.

## **Health Impact Assessment Screening**

We have undertaken a screening process to determine whether this policy needs a full health impact assessment. The proposal only potentially changes the process through which a variation may be made for certain low risk variations which will not impact on the licensing objectives (which include the prevention of crime and disorder and public nuisance) which would otherwise be granted without any difficulty. Since it

does not otherwise change any other element of licensing policy, we do not believe that a health impact assessment is required.

**We have considered that the policy will not have:**

- **a significant impact on human health by virtue of its effects on the following wider determinants of health:** Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture or Social cohesion.
- **a significant impact on any of the following lifestyle related variables:** Physical activity, Diet, Smoking, drugs, or alcohol use, Sexual behaviour, Accidents and stress at home or work.
- **a significant demand on any of the following health and social care services:** Primary care, Community services, Hospital care, Need for medicines, Accident or emergency attendances, Social services, Health protection and preparedness response

## **ANNEX B: DRAFT STATUTORY GUIDANCE**

### **Introduction**

8.33 This Guidance revises and replaces the Guidance on variations of premises licences published on 28 June 2007. Where a premises licence holder wishes to amend the licence the Act allows, in most cases, for an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives.

### **Changes of name and address/Designated Premises Supervisor**

8.34 There are simplified processes for making applications in the following cases: a change of the name or address of someone named in the licence (section 33); an application to vary the licence to specify a new individual as the designated premises supervisor (section 37); an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the mandatory conditions concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); an application for minor variation of a premises licence (sections 41A to 41C).

### **Minor variations process**

8.35 The Licensing Act 2003 has been amended by the insertion of sections 41A to 41C relating to minor variations. These sections were commenced on [*insert date*] Small variations that will not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process. Under this process, the applicant is not required to advertise the variation in a newspaper or circular, display it on a blue notice, or copy it to responsible authorities.

8.36 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing

objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.

8.37 In considering 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 instance, they may need to consult the environmental health officer on an application with possible public nuisance implications. But 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.

8.38 The licensing authority must respond to the applicant within 15 working days, beginning on the first working day after the authority receives the application, to inform them either that:

- the minor variation has been granted; or,
- the application has been refused.

8.39 If the licensing authority fails to respond to the applicant within 15 working days (see section 193 of the Act for a definition of working day) the application will be treated as refused and the authority must return the fee to the applicant forthwith. The licensing authority and the applicant may agree a longer period of time for determination in any individual case.

8.40 Where an application is refused and is then re-submitted through the full variation process, 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.

8.41 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. **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**

8.42 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:

- o increasing the capacity for drinking on the premises ;
- o 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;
- o impeding the effective operation of a noise reduction measure such as an acoustic lobby;

8.43 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.

## **Licensable Activities**

8.44 An application to remove a licensable activity should normally be approved as a minor variation.

8.45 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.

8.46 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.

8.47 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 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.

8.48 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.

8.49 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**

8.50 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.

8.51 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.

8.52 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**

**8.53 Licensing authorities cannot impose 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**

**8.54 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.**

8.55 For instance, there may be 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 alert 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**

- 8.56 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.
- 8.57 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.
- 8.58 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.
- 8.59 There may also be a small number of 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**

- 8.60 Any other changes to the licence require an application to vary under section 34 of the Act.
- 8.61 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).

8.62 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.

8.63 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.

## ANNEX C: RESPONDENTS TO PUBLIC CONSULTATION

Action with Communities in Rural England	Coventry City Council
Action in Rural Sussex	Coventry City Council (Public protection)
Association of Licensed Multiple Retailers	Durham City
Amber Lounge Ltd	East Herts Council
Association of Circus Proprietors	East Sussex Fire and Rescue
Association of Convenience Stores	Everards
Barry Richards	Fire & Rescue authorities Wales
Basingstoke and Deane LA	Forest Heath District Council
Birmingham City Council	Gloucestershire Licensing Officers Group
British Institute for Sport and Leisure	GT Licensing Consultants
Bracknell Forest Borough	Guild of Master Victuallers
Brentwood Borough Council	Hackney Council
British Beer and Pub Association	Hampshire Fire and Rescue
British Holiday & Home Parks Association	Havering Council (Head of Licensing)
British Hospitality Association	Havering Council (Licensing)
British Marine Federation	Hinkley & Bosworth Council
British Music Rights	Historic Houses Association
Carpenters Arms Motel	Horsham District Council
Carrick District Council	Ipswich Borough Council
Central Council Amateur Theatre	Isle of Wight Fire and Rescue Authority
Central Council of Physical Recreation	James Motion
Churchgate Area Association	John Birch Licensing Consultant
Cinema Exhibitors Association	John Pinnington
City of London	Licensing Act Active Residents Network
Co Durham & Darlington	Licensing Legal
Fire and Rescue Service (FRS)	Lincolnshire Fire & Rescue
Colchester Borough Council	Little Theatre Guild
Concert Promoters Association	Local Authorities Coordinators of Regulatory Services
Committee of Registered Clubs Associations	London Borough Camden
Covent Garden Community Association	London Fire Brigade
	Medway Council
	Mid Devon District Council

Mid Suffolk District  
Milton Keynes District  
Musicians Union  
National Association of  
Licensing and Enforcement  
Officers  
Newark & Sherwood District  
Council  
National Organisation of  
Residents Associations  
NOCTIS  
Northumberland Fire and  
Rescue  
Norwich City Council  
Nottinghamshire  
Olton Mere Sailing Club  
Open All Hours  
Organisation  
Organisation  
Patersons  
Penwith District Council  
Popplestone Allen  
Punch Taverns  
Rochford District Council  
Royal Berks Fire Authority  
Sammonds  
Seafarers Sailing Club  
Shropshire FRS  
Soho Society  
South Ribble Borough  
Council  
St Albans District Council  
Staffordshire Moorlands  
District Council

Stewart Hilton  
Stockton on Tees Borough  
Council  
Suffolk Coastal District  
Council  
T/As Licensing Consultancy  
Services  
Tate  
Tendring District Council  
The Co-operative Group  
The Hub  
The Newspaper Society  
The Racehouse Association  
Ltd  
The Richmond Society  
Toby Cunningham  
Uttlesford DC  
Wales Council for  
voluntary action  
Wansbeck Council  
Waveney District Council  
Welwyn Hatfield District  
Council  
West Midlands Fire and  
Rescue  
Westminster Citizens  
advice  
Wig and Mitre Group of  
Pub-restaurants and Shop  
Wilmington Society  
Wine and Spirits Trade  
Association  
Woking Borough Council

## ANNEX D: SUMMARY OF INITIAL CONSULTATION

### PROPOSAL TO AMEND THE LICENSING ACT 2003 TO INTRODUCE A SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO LICENCES: INITIAL CONSULTATION (31/11/07 - 20/2/08)

#### SUMMARY OF CONSULTATION RESPONSES

##### Introduction

1. This document provides:

- a summary of responses to the public consultation on the Department's proposal to introduce a simplified process for making minor variations to licences. This is based on the official version published on the DCMS website;
- the Department's response to issues raised by respondents.

2. The consultation ran from 31 November 2007 to 20 February 2008. We received a total of 109 responses from a wide range of stakeholders. A full breakdown is provided below. Copies of all responses to the consultation were made available on the Department's website.

Category of respondent	Number of responses
Licensing authority	41
Licensed trade	30
Members of the public	3
Residents associations	8
Legal profession	10
Responsible authority	11
Musicians groups	2
Rural organisations	2
Individual councillors	1
Circus	1
<b>Total</b>	<b>109</b>

##### Main policy options

3. Respondents were presented with three options:

**Option 1:** 'Minor' variation defined broadly in the Act as any change to a licence that will not impact adversely on the four licensing objectives. Licensing authorities (LAs) to have discretion within this broad definition and subject to supplementary, statutory Guidance, to decide if a variation is minor. Department's recommended option

**Option 2:** 'Minor' defined more narrowly in the Act to specifically include or exclude certain types of variation, effectively constraining or removing LA discretion.

**Option 3:** No change.

4. Overall, a majority of respondents agreed with the Department's recommendation (Option 1). However, a minority of respondents, including all residents' associations and a few LAs, preferred either Option 2 or Option 3. Their view was that giving discretion to LAs would lead to inconsistencies in interpretation and the risk that licensing officers might allow variations under the minor variation process that could affect residents and local businesses. Residents groups in particular were concerned that applications for later licensing hours for the sale or supply of alcohol might be allowed through the new process, with no opportunity for residents to object. Similar concerns were also expressed, but to a lesser extent, about the addition of licensable activities, changes to the layout of a premises and changes to licence conditions.

Department's response: *Most of these concerns are addressed in the proposed statutory Guidance which provides licensing authorities with detailed advice and recommended criteria to consider when deciding whether a variation is minor. However, we recognise that appropriate weight should be given to the particular concerns expressed about alcohol related variations and for this reason have **excluded from the minor variations process:***

- *the addition of the sale or supply of alcohol to a licence or club premises certificate;*
- *the sale or supply of alcohol at any time between 11pm and 7pm*
- *any increase in the amount of time on any day during which alcohol may be sold or supplied.*

#### **The minor variation process**

5. A majority of respondents agreed with the Department's recommendations on the detail of the

proposed minor variation process. A full breakdown of responses to each question is provided in the Annex. However, there were some minority views and these are noted below.

**Broad definition of a 'minor' variation** (Question 2)

6. A small number of respondents disagreed with the Department's proposed broad definition of a minor variation (i.e. a change that would not impact adversely on the licensing objectives). However, there was no consensus on an alternative.

**Consultation with responsible authorities** (Questions 5 and 6)

7. The Department recommended that licensing officers should consult only 'relevant' responsible authorities as they judged necessary depending on the nature of the application.

8. A minority of respondents thought that licensing officers were not always competent to judge potential impact and should therefore be required to consult all responsible authorities (as for the full variation process).

**Department's response:** *Licensing officers have sufficient knowledge and expertise to identify potential risks and take informed decisions about which responsible authorities to consult. The proposed statutory Guidance will provide further advice and help. A requirement to consult all responsible authorities would be an unnecessary burden on the licensing authority and on responsible authorities.*

**Right of appeal** (Question 7)

9. The Department recommended that there should be no entitlement to appeal where a minor variation application was referred to the full variation process. This would not amount to a rejection of the substance of the application but only a referral for more detailed consideration.

10. A minority believed that as a matter of principle, there should be an entitlement to appeal against all adverse local government decisions and/or that the prospect of an appeal would act as a proper constraint on licensing officers' discretion.

**Department's response:** A right of appeal is appropriate when the decision taken by the licensing authority is final and the applicant has no other recourse. However, if the licensing authority rejects a minor application the applicant may either submit a revised application through the minor variation process or apply for a full variation. The applicant has a right of appeal if the licensing authority rejects a full variation. Against this background, an appeal to the magistrates' courts would introduce disproportionate costs for applicants, licensing authorities and others and an extra layer of bureaucracy and complication in what is intended to be a simplified procedure.

**Notification period (Questions 8 and 9)**

11. The Department recommended that licensing officers should respond to applications for minor variations within 10 days to either approve the application or refer it to the full variation process.

12. A minority of respondents disagreed, but there was no consensus on an alternative period with suggestions ranging from 15 to 28 days.

**Department's response:** At the time, the Department considered that ten working days was sufficient time to either approve a minor variation or decide that it should be referred to the full variation process. However, following further consultation on this issue in the second stage of consultation and the strong views expressed by a significant number of respondents, the notification period has been changed to 15 working days.

**Notification of Responsible authorities if variation referred to the full variation process (Question 11)**

13. The Department recommended that if a minor variation was referred to the full variation process, the applicant should be required to copy the application to all responsible authorities, including those already consulted under the minor variation procedure.

14. A minority of respondents thought that the application should only be copied to authorities that had not been consulted previously or authorities deemed 'relevant' by the licensing authority.

**Department's response:** This would effectively create a third, hybrid, variation process, somewhere between a full and a minor variation, that could confuse

*applicants. It would not address the fact that applicants may have modified their original application.*

#### **Definition of minor variation under Option 2**

15. Respondents were asked how they would wish to see minor variations defined under Option 2 (i.e. specific inclusions/exclusions).

16. Only 19 respondents gave their views on how a minor variation should be defined and it was not always clear if they wanted to see these definitions in the Act or in Guidance. A number of exclusions were suggested including:

- extensions to licensing hours, particularly for the sale or supply of alcohol;
- the addition of most licensable activities;
- changes in layout that would increase the licensed area/capacity or affect fire or other health and safety conditions;
- changes to licence conditions, except perhaps those carried over from the previous licensing regime.

*Department's response: As for paragraph 4 above. There is insufficient consensus among respondents to justify further exclusions on the face of the Act.*

#### **Other options (Question 22)**

17. A small number of respondents suggested alternative options, but there was no consensus and the proposed options were variants of the three main options proposed in the Consultation Document.

## ANNEX E: SUMMARY OF SECOND STAGE CONSULTATION

### Overall responses

1. The second stage consultation on the proposal for a minor variations process ran from 4 August to 1 September. We received a total of 83 responses from a variety of stakeholders. A full breakdown of respondents by type is provided below. A summary of numbers responding to each question is provided in the Appendix.

Type of respondent	Number of responses
Local authority/town council	26
Licensed trade	25
Members of the public	1
Residents associations	8
Legal profession	5
Responsible authority	8
Musicians groups	2
Rural organisations	6
Government body	2
<b>TOTAL</b>	<b>83</b>

2. The main points arising from the consultation are summarised below with the Department's response in italics after each point, or group of points, for clarity.

#### **QUESTION 1: Do you agree that this draft Order accurately reflects the new minor variation process described?**

3. Most respondents agreed that the Government's draft order accurately described the new minor variation process. There were a few comments and suggestions for further clarification as follows.

- There was some confusion about whether Licensing Authorities could impose conditions on minor variations if a responsible authority had concerns. Also confusion about the status of responsible authorities' views - are they 'representations'? What does 'take into account' mean? Is a hearing

required to take account of them or are we delegating this to licensing officers?

*Licensing authorities will not be able to impose conditions on licences under the new process. The licensing authority must consider the views of responsible authorities, but they are not formal 'representations' as under the full variation process and there is no hearing. These points have been clarified in the Guidance.*

- Should the Order state that if the application is rejected, the full variation process will apply?

*No, it is the applicant's choice whether to apply again - whether with a revised application under the minor variations process or through the full variation process.*

- What about incremental Minor Variations that cumulatively have an adverse impact on licensing objectives?

*This is dealt with in paragraph 8.43 of the Guidance.*

- The applicant should be required to enclose the licence with the form. The Order should state that the amended licence should be returned if the variation is granted.

*It is clear on the application form that the licence is required. The full variations provisions in section 34 of the Act do not include these stipulations and it would therefore be inconsistent to spell them out for the minor variation process.*

- The Order as currently drafted only requires the grant of the variation to be communicated to the licence holder within the statutory period. A rejection of the application should also be communicated within this period.

*Agreed. Section 41B(5) of the Order has been amended to reflect this point.*

- Section 86A(3)(a) - 'vary substantially the premises...' is confusing.

*This section is not new. It has been carried over from the current Guidance. This text was requested by*

*respondents to the review of the Guidance which was completed in June 2007.*

- The Order should also exclude:
  - the extension of opening hours after 11pm in premises licensed for sale of alcohol as this could lead to increased consumption/people leaving premises later/drunker;
  - the addition of the performance of dance/facilities for dance - public nuisance/crime and disorder issues;
  - the addition of live music as it will always impact adversely on the licensing objectives.

*The Act does not regulate the consumption of alcohol. Licensing officers will assess an application against the primary test of whether it is likely to impact adversely on the licensing objectives. These are policy matters which were consulted upon and decided following the initial consultation. ( It is worth noting that only a small number of respondents raised these issues).*

- One trade association suggested that variations that do not impact adversely on the licensing objectives should not need to be submitted to or approved by the licensing authority.

*We disagree. Whether or not a variation is likely to impact on the licensing objectives is a matter for objective consideration by the licensing authority, not the partial judgement of the licence holder.*

- The off trade disagrees with the decision to exclude the extension of hours for the sale of alcohol. Convenience stores and other retail outlets may wish to match their licensing hours for the sale of alcohol to their opening hours for the sale of other goods. The current statutory Guidance states that stores, etc. should normally be allowed to do this unless there is a good reason, based on the licensing objectives, for restricting these hours. This suggests that this type of change should be eligible for the minor variations process.

*The Government has become increasingly concerned about the availability of cheap alcohol through cut price offers and deals in supermarkets and under-age sales in supermarkets and off-licences. The Department considers that the sale of alcohol in these premises should be*

*excluded from the minor variations process because of the potential adverse impact on the licensing objectives.*

**QUESTION 2: Does the draft Guidance provide sufficient advice to assist licensing officers in coming to a decision on whether a variation is minor?**

4. A majority of respondents agreed that the draft Guidance provided sufficient advice to licensing authorities, but nearly half of those who responded made suggestions to further clarify and improve the text to make it more useful to licensing authorities as below.

- Paras 8.34 – 8.47: Expand to make explicit that amendments to licensing activities can be accompanied by amendments to licensing conditions if these have been volunteered by applicant or arrived at following discussions with RAs.

*Agreed. Further Guidance provided in paragraphs 8.53 and 8.54.*

- Para 8.37. States no requirement for LA to consult all RAs on each application and in some cases the licensing officer may be able to reach a decision without consultation. Suggest that this should be firmer, i.e. not necessary in most cases to consult all RAs.

*Agree. Amended.*

- Para 8.37 Should be consistent with the Order and state that licensing officers 'must' consult relevant RAs rather than 'should'.

*Agreed. Amended.*

- 8.39. Talks about minor variations to make 'small adjustments to licensing hours'. Not clear what these could be.

*Changes in licensing hours for non-alcohol related licensable activities, reduction in licensing hours for all licensable activities, changes to licensing hours for the sale of alcohol between 11pm and 7am as long as this does not result in an overall increase. This is clarified in paragraph 8.50 of the Guidance.*

- Para 8.40 - last sentence - 'the overall test is whether the proposed variation could impact adversely on the four licensing objectives'. Insert 'any of' between 'on' and 'four' to be clear that a variation doesn't have to impact on all the LOs.

*Agreed. Amended.*

- Para 8.40. Why doesn't the list of potential minor variations include 'removal of a licensable activity'?

*Agreed. This is now included.*

- Para 8.41 (Changes to structure/layout) states that 'changes to layout should *normally* be referred to the full variation process if they could ...have an adverse impact on ...the licensing objectives. This suggests that there may be times when they may have an adverse impact, but should not be referred. Delete 'normally'.

*Agreed. Amended to delete the word 'normally'.*

- Paras 8.48 - 8.50. Amend all time references to use the 24 hour clock.

*Agreed. Amended.*

- Para 8.53. Example given of fire safety related conditions which don't need to be removed from the licence but 'licensing authorities may feel that this is desirable to clarify the licensee's legal obligation'. This could be interpreted to mean that licensing authorities should proactively seek applications whereas this should be a decision for licence holders.

*Agreed. Amended.*

- Para 8.41. Advises that whether a variation is like to increase 'the capacity for drinking on the premises' may be one factor for licensing authorities to consider in reaching a decision. Respondents concerned that this might include simply lengthening bar or moving fixed furniture. Suggest change to 'extension of the premises'. Another suggestion is to amend to 'a marked change in the capacity for drinking on the premises' to allow for

small increases that will not impact on the licensing objectives, e.g. 60 - 90.

*The Guidance is clear that the overall test for a minor variation is whether the proposed variation is likely to impact on the licensing objectives. The licensing authority will consider whether a change which may increase the capacity for drinking is likely to impact on the licensing objectives or not, taking into account the other factors listed in the Guidance. It is not possible to quantify an increase in capacity that will always be relevant for all premises.*

- Para 8.45. States that adding live or recorded music to a licence 'may impact on the public nuisance objective'. Some respondents think this is likely to bias licensing authorities against live music, when there is no evidence that this is the case. They suggest referencing the findings of the Live Music Forum<sup>5</sup> that very few noise complaints relate to live music, unamplified music is unlikely to impact on residents, etc.
- However, some respondents believe that live music should not be a minor variation in any circumstances and contest the view that unamplified music, e.g. brass bands, is less likely to impact on licensing objectives. They are also unhappy with the Department's stated intent 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'. Others are happy that live music should benefit where appropriate, but do not see why it should be treated separately to other forms of regulated entertainment such as films or dance.

*The issue of live music attracts a range of views. However, the Department feels that this section of the Guidance strikes the right balance between encouraging the spread of live music and recognising its benefits to the wider community and acknowledging that, in certain circumstances, live music events may impact adversely on the licensing objectives - particularly the public nuisance objective.*

- Para 8.55. The proposed use of the minor variations to include new licence conditions following

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<sup>5</sup> An independent panel set up by DCMS in 2006 to consider the impact of the Act on live music.

agreement between the licence holder and responsible authority was open to abuse. The text should be amended to emphasise that there must be genuine agreement and that licensing authorities should be alive to the possibility of coercion.

*This proposal was intended as a pragmatic use of the minor variations process which could in some circumstances, avoid the necessity for a full review of the licence (with the associated costs to the licence holder and other parties). However, we recognise this may be open to abuse by a small minority of responsible authorities and have therefore amended the text to remind licensing officers to be alert to any suggestion of coercion and take appropriate action.*

**QUESTION 3: Do you agree that there is no need for any specific action in the event that a licensing authority is unable to respond to the applicant within the statutory time period?**

7. Nearly half of respondents did not feel that it was satisfactory to take no specific action if an LA failed to respond within 10 days. Suggested alternatives included:

- an extended time period of 15-20 days;
- deemed consent if no response within the statutory time period (and possibly return of fee);
- letter from LA (within the 10 day period) to applicant stating reason for delay and when a response will be sent, otherwise deemed consent.
- deemed consent if no response within 28 days (regardless of statutory time limit).

*The Department agrees with the arguments put forward for some form of action in the event that a licensing authority fails to respond within the statutory timescale. Following further discussion in the Licensing Advisory and sub group, the Order has been amended to extend the statutory time period to 15 days to allow licensing authorities sufficient time to consult, if necessary, relevant licensing authorities. If the licensing authority does not respond to the applicant within this timescale, the fee must be refunded unless the authority and the applicant agree a longer timescale and the application is treated as refused. Deemed refusal was regarded as a more practical effect of a 'failure to*

*determine' given the difficulties of implementing a deemed consent (deemed consent would require actual amendments to the licence to be 'effective').*

**QUESTION 4: Do you think the recommended fee is right/too low/too high?**

8. A majority of respondents agreed that the fee was set at the correct level this, including most licensing authorities. Those who disagreed were evenly divided between those who thought it was too high (mainly the licensed trade) and those who thought it was too low (mainly licensing authorities).

*The Department considers that the fee is set at the right level.*

**QUESTION 5: Do you think that applicants will be able to complete this form easily without seeking legal advice?**

*A majority of respondents thought that the form could be completed without legal help. Some suggestions were made to simplify it further and these have been taken on board where appropriate.*

**QUESTION 6: Does this form provide sufficient information for a licensing officer to decide whether a variation is minor?**

9. A majority of respondents were happy with the form and agreed that it provided sufficient information for licensing officers, but made some suggestions to shorten and improve it. These suggestions have been taken into account in the final version of the form.

**QUESTION 7: Do you agree with the costings in this Impact Assessment?**

10. The majority of respondents agreed with the costings in the Impact Assessment. Of the three respondents who disagreed, one had no specific comments and the other two thought that the costs of the current variation process were under-estimated.

*No change. Nearly all respondents agree with the estimates in the Impact Assessment which already include a broad range of costs for the current variation process (£385-£950).*

## Consultation Responses

**QUESTION 1: Do you agree that this draft Order accurately reflects the new minor variation process described.**

Agree	53
Disagree	11

**QUESTION 2: Does the draft Guidance provide sufficient advice to assist licensing officers in coming to a decision on whether a variation is minor?**

Agree	37
Disagree	27

**QUESTION 3: Do you agree that there is no need for any specific action in the event that a licensing authority is unable to respond to the applicant within the statutory time period?**

Agree	35
Disagree	31

**QUESTION 4: Do you think the recommended fee is right/too low/too high?**

a) Right	b) Too low	c) Too High
41	12 (suggested £40 - £60)	12 (suggested £100 - £193)

**QUESTION 5: Do you think that applicants will be able to complete this form easily without seeking legal advice?**

Agree	50
Disagree	10

**QUESTION 6: Does this form provide sufficient information for a licensing officer to decide whether a variation is minor?**

Agree	42
Disagree	13

**QUESTION 7: Do you agree with the costings in this Impact Assessment?**

No comment

Agree	23
Disagree	3

**ANNEX F: MEMBERSHIP OF LICENSING ADVISORY GROUP AND SUB GROUP**

\* = Minor Variations Sub Group

\*Action with Communities in Rural England  
Alcohol Concern  
Arts Council England  
\*Association of Chief Police Officers  
\*Association of Convenience Stores  
Association of Licensed Multiple Retailers  
BERR  
BII (British Institute of Innkeeping)  
\*British Beer & Pub Association.  
British Hospitality Association  
British Marine Federation  
\*British Retail Consortium  
\*Business In Sport and Leisure  
Chartered Institute of Environmental Health  
Cinema Exhibitors Association  
\*Civic Trust  
\*Federation of Licensed Victuallers Associations  
\*Federation of Small Businesses  
Justices' Clerks Society  
\*LACORS  
\*London Borough of Havering  
\*London Councils/ RBKC  
Magistrates Association  
\*Musician's Union  
\*NOCTIS  
\*NOCTIS/ Poppleston Allen Solicitors  
Paterson's  
\*The Guild of Master Victuallers  
\*Working Men's Club and Institute Union/ CORCA

