



DCMS CONSULTATION

LEGISLATIVE REFORM ORDER: PROPOSALS TO INTRODUCE A SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

RESPONSE FROM THE BBPA

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and around two thirds of the 57,000 pubs in the UK. The Association believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. We welcome this opportunity to comment on the reform Order and Guidance for the minor variations process.

Question 1: Do you agree that this draft Order accurately reflects the new minor variation process described at Section 2, Chapter 1 of this consultation document? If no, please describe in detail how you think the draft Order should be amended.

Yes. We believe the draft Order does accurately reflects the new Minor Variation process.

Question 2: Does this draft Guidance (Section 2, Chapter 3) provide sufficient advice to assist licensing officers in coming to a decision on whether a variation is minor? If no, please describe in detail what additional Guidance should be provided.

Overall the guidance does provide adequate advice on minor variations; however we would take this opportunity to comment on:

Para 8.37 – The wording of this paragraph could place more emphasis on the fact that it will generally not be necessary in most cases to involve all responsible authorities.

Para 8.41- The examples given as not suitable for minor variations include 'increasing the capacity for drinking on the premises'. The scope of this is extremely broad in that it could apply to situations where applicants simply want to increase the length of the bar or move fixed furniture. We would recommend that this example is changed to 'extension of the premises'.

Para 8.53 – 'Although the conditions do not have to be removed from the licence, 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 actively seek minor variation applications from premises. However, it is up to the licensee as to whether they wish to remove or amend conditions via the minor variations process. We suggest this paragraph is amended to reflect this.

Para 8.55 – The guidance here should explicitly state that the licensee must be willing to make the application, and that the licensing authority or responsible authorities have no basis to force an application.

Question 3: Do you agree that there is no need for any specific action in the event that the licensing authority is unable to respond to the applicant within the statutory time period? (See Section 2 Chapter 3) If no, please explain what action should be taken and why?

No. The Association is extremely concerned at this approach. We believe the licensing authority, like any other body providing a service should be held accountable for any lapses in procedure. The lack of specific action outlined in the current draft guidance is inadequate for a number of reasons. Deemed refusal is described as being 'unfair to the applicant', yet not informing the applicant of any delay or the progress of their application is effectively 'deemed refusal' as the licensee cannot begin to make any of the changes applied for in the minor variation. Para 3.5 states that in the case of a lack of response the applicant should 're-apply'. This suggests that applications that the licensing authority fails to deal with in the ten day period are null and void, and applicants must start the process again. This is wholly unacceptable and unnecessary, and would undermine the reduction in administrative burdens that this measure is designed to address.

There is an assumption made in the draft guidance that the situation of failure to respond after 10 days will rarely occur. We hope that this is the case, but some problems are inevitable and the applicant should have some form of redress available to hold the service provider to account.

Our suggestions for specific action in events where the licensing authority fails to respond include:

- (i) Immediate progression of the application and a full refund of the £73 application fee once the statutory limit is breached
- (ii) The right to an appeal to the licensing committee or local Better Regulation Office to investigate the cause of the delay

- (iii) To increase the amount of time given to respond to 15 days, and have deemed acceptance of the application after this point if no response from the licensing authority is received.

Our preference is for option (iii) in the interest of simplicity and greater efficiency of process.

Question 4: Do you think the recommended fee (Section 2, Chapter 4) is a) right, b) too low, or c) too high? If you think the fee is too high or too low, please suggest an alternative figure including tasks undertaken and provide average time required to complete them and proportion of professional/administrative effort required.

- a) We believe the proposed fee level is set at about the right level. We would certainly disagree that it should be raised any higher than this, as we believe £73 is an ample fee to process a minor variation.

Question 5: Do you think that applicants will be able to complete this form (Section 2, Chapter 5) easily without seeking legal advice? If no, please specify how it could be made more user friendly.

For ease of use the form is far too long. We believe a form for minor variations should be no more than three pages long for simplicity's sake. Licensing authorities will already have much of the information on file (e.g. contact details which are repeatedly requested and will, in any case, be on the licence – a copy of which will be submitted with the application). The longer and more complex the form is, the more likely the applicant will have to seek legal advice. We have taken the liberty of setting out what we believe to be the essential information for the application, attached at the end of this response. The form should also prominently include a statement that the application has to be dealt with by the Licensing Authority within ten days and the form of redress the applicant has once this period has expired.

Question 6: Does this form (Section 2, Chapter 5) provide sufficient information for a licensing officer to decide whether a variation is minor? If no, please specify what additional information should be provided.

The form has ample information for licensing officers to decide if the proposed variation is minor.

Question 7: Do you agree with the costings in this Impact Assessment (Section 2, Chapter 6)? If no, please give your reasons and provide alternatives.

As previously stated, the BBPA estimated the cost of a full licence application to be £1,800 per pub, higher than the DCMS estimate. The minor variations procedure outlined in this Order should therefore provide significant savings

for pubs, provided that it is kept as straightforward as possible and unnecessary costs are not built into the process.

LEGISLATIVE REFORM ORDER: PROPOSALS TO REMOVE THE REQUIREMENT FOR DPS AND PREMISES LICENCES FROM COMMUNITY PREMISES.

General Comments

We would make the comment that all premises carrying out licensable activities under the 2003 Act should be subject to the four licensing objectives. Whilst we do agree that some relaxing the rules on DPS/personal licences is appropriate for some 'community premises', care has to be taken that it is not used as a blanket definition as this could lead to commercial community operations being exempted from the provisions to retail alcohol responsibly.

Question 1: Do you agree that this draft order accurately reflects the new process described at Section 3, Chapter 1 of this consultation document to allow the disapplication of mandatory conditions

Agree.

Question 2: Does this draft Guidance (Section 2, Chapter 3) provide sufficient advice to assist licensing officers in coming to a decision on whether a premises meets the requirements set out in the proposed s25A (6) of the 2003 Act to allow the disapplication of the mandatory conditions relating to personal licence holders and DPS?

In general we agree with the Guidance. However, we would comment on:

Para 4.36 – We disagree with the definition given here to 'community premises'. Some reference should be made to premises operating as a commercial outlet being subject to the same scrutiny as other licensed premises.

Question 3: Do you think the recommended fee (Section 3, Chapter 4) is a) right, b) too low, or c) too high?

a) About right.

Question 4: Do you think that applicants will be able to complete this form (Section 3, Chapter 5) easily without seeking legal advice?

Agree.

Question 5: Does this form (Section 3, Chapter 5) strike the right balance between providing sufficient information for a licensing officer to decide whether a hall is a community premises and has an adequate management structure and minimises burdens on business?

Agree.

**BBPA
27.08.08**

Application for a minor variation to a premises licence/club premises certificate under Part 4A of the Licensing Act 2003



Name of Applicant:

Premises Licence/Club Premises Licence Certificate Number:

Contact Telephone Number:

Date application submitted to authority:

Details of Variation:

Do you believe your variation will impact on the following licensing objectives (tick box):



Prevention of Crime & Disorder



Prevention of Public Nuisance



Public Safety

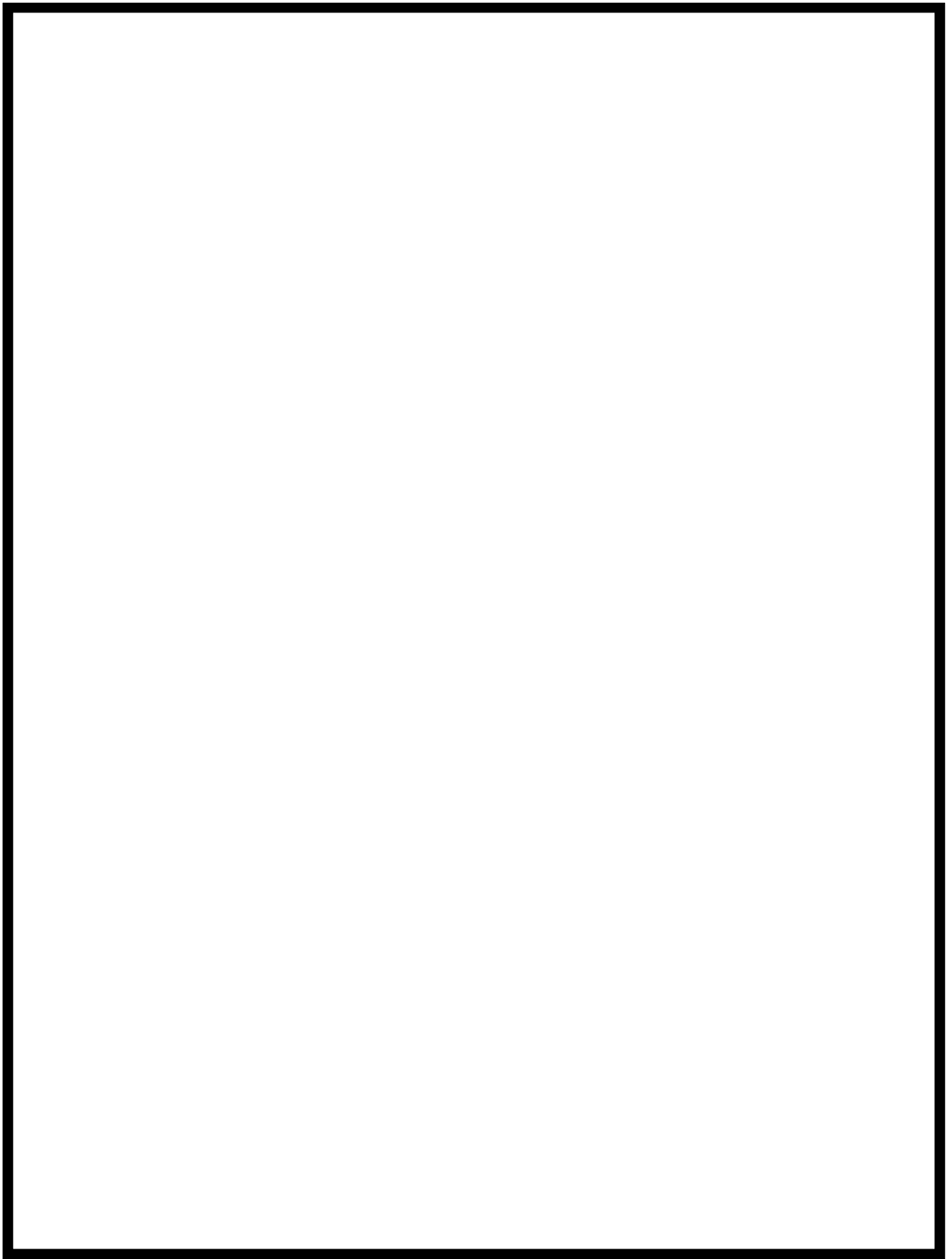


Protection of Children from Harm

Please use this space and the following page to:

(i) Describe the proposed variation

(ii) Describe how it affects the objectives ticked above (if any)





I have enclosed a copy of the premises licence/club premises certificate

If the above has not been enclosed, please explain reasons why:



I have enclosed the relevant fee

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO L5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN CONNECTION WITH THIS APPLICATION

Signature of applicant (or other duly authorised agent)

Date

Capacity:

Where the premises is a club:

I (*insert name*).....make this application on behalf of the club and have authority to bind the club.

Signed:

Date

THE LICENSING AUTHORITY HAS A STATUTORY DUTY TO RESPOND TO THIS APPLICATION WITHIN 10 DAYS. IF THIS FAILS TO OCCUR YOU HAVE THE OPTION OF REDRESS etc...