

Proposals to Introduce a New Minor Variations Process and Remove Certain Requirements at Community Premises

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Poppleston Allen has a training arm which provides training for licensees, local authorities, the police and others interested in the leisure trade. Poppleston Allen is also pleased to advise a number of trade bodies including Noctis, the BBPA and the WSTA.

Overview

PA has no comment to make on the removal of the requirement for a designated premises supervisor on certain community premises. The current proposals seem satisfactory.

Members of the PA team have expressed a consistent view, pre- and post- licensing reform, that there ought to be a simple procedure for making minor variations to premises. This was exacerbated by the decision, rather late in the day, to require applications of this nature to be advertised in newspapers. It has added significantly to the cost and arguably provided very little benefit to anyone. It was also exacerbated by a dispute that arose after the Act became law over minor alterations to the plan which was submitted which contained matters not required by the Regulations to be shown, e.g. the position of the bar if it didn't impact upon exit from the premises or changes to the internal layout.

Some authorities have required applications to be made on any alteration to the plans no matter how small. There are two schools of thought as to whether this requires an application for variation but most clients would generally decide to make an application to prevent delays. Paragraph 8.57 of the new draft Guidance raises this as an issue.

The present system clearly needs to be changed. At present, many authorities operate an informal minor variation procedure simply requiring the basic fee of £10.50 to be sent with a revised plan

showing the variation proposed. There is no legal authority backing this and it is clearly important that one is introduced as quickly as possible. The current system of informal approval is not universal. Some authorities that have done it have backed off whilst others are taking it up. Some would like to do it but have been told they can't and others are insisting on the full variation procedure regardless of the size of the alterations.

Turning to the new proposals, PA are very concerned that there is no method of ensuring that the licensing authority deals with the application. It is true that section 86B (5) states that a determination "must" be made within the period of 10 working days but there is no sanction for this. PA would suggest that, as a minimum, the fee of £73 (or whatever) should be returned if no determination is made within the statutory period.

Question 1: Does this draft Order accurately reflect the new minor variation process described in section 2, chapter 1 of this consultation document.

Yes.

Question 2: Does this draft Guidance (s2, chapter 3) provide sufficient advice to assist licensing officers in coming to a decision on whether a variation is minor?

Paragraph 8.37 of the draft Guidance could be more robust. There will be a significant number of cases where the licensing officer can make his own decision without consultation.

At 8.39 of the draft Guidance, it is a little difficult to see what "small adjustments" to licensing hours could be, given the other restrictions around the hours.

8.41 – The example "Increasing the capacity for drinking on the premises" should be amended to show that it relates only to a significant increase in the space available to the public and not e.g. for a lengthened bar counter.

Generally, the draft Guidance is extremely cautious and would enable, in some cases, local authorities to refuse almost any application. Having said that, in the current climate maybe this is sensible to ensure an easier Parliamentary passage.

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?

PA understands the problem but is concerned that there is no provision for appeal, even where a licensing authority makes no attempt to deal with any minor variation. PA propose that, as a minimum requirement, the fee should be returned by the licensing authority if the application is not determined within the statutory time limit of 10 working days. PA does not believe that this time limit should be increased.

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

PA would not wish to see the fee go any higher or there is a risk that this procedure would not be used. PA would have preferred to see a figure of around about £50.

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

PA believes that they will be able to. Quite why the part 2 applicant details are necessary when all this information should already be with the licensing authority is not explained. It is vitally important that the solicitor should be able to sign the form on behalf of the applicant.

Question 6: Does this form provide sufficient information for a licensing officer to determine whether a variation is minor?

Yes.

Question 7: Do you agree with the costings in the impact assessment?

Frankly, this depends upon the response of licensing authorities to the applications for minor variations. Assuming that it is widely used then they're probably accurate.